THE NORTH CAROLINA STATE BAR

JOURNAL

SPRING
2007

IN THIS ISSUE

We want your fiction!

Historical Fiction *Romance*
International Espionage
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Fourth Annual Fiction Writing Competition

The Publications Committee of the *Journal* is pleased to announce that it will sponsor the Fourth Annual Fiction Writing Competition in accordance with the rules set forth below. The purposes of the competition are to enhance interest in the *Journal*, to encourage writing excellence by members of the bar, and to provide an innovative vehicle for the illustration of the life and work of lawyers. If you have any questions about the contest, please contact Jennifer Duncan, Director of Communications, North Carolina State Bar, 6568 Towles Rd., Wilmington, NC, 28409; ncbar@bellsouth.net; 910.397-0353.

Rules for Annual Fiction Writing Competition

The following rules will govern the writing competition sponsored by the Publications Committee of the *Journal*:

1. The competition is open to any member in good standing of the North Carolina State Bar, except current members of the Publications Committee. Authors may collaborate, but only one submission from each member will be considered.

2. Subject to the following criteria, ***the article may be on any fictional topic and may be in any form*** (humorous, anecdotal, mystery, science fiction, etc.). Among the criteria the committee will consider in judging the articles submitted are: quality of writing; creativity; extent to which the article comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The committee will not consider any article that, in the sole judgment of the committee, contains matter that is libelous or violates accepted community standards of good taste and decency.

3. All articles submitted to the competition become property of the North Carolina State Bar and, by submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental, and that the article has not been previously published.

4. Articles should not be more than 5,000 words in length and should be submitted in an electronic format as either a text document or a Microsoft Word document.

5. Articles will be judged without knowledge of the identity of the author's name. Each submission should include the author's State Bar ID number, placed only on a separate cover sheet along with the name of the story.

6. All submissions must be received in proper form prior to the close of business on May 25, 2007. Submissions received after that date and time will not be considered. Please direct all submissions to: Fiction Writing Competition, Jennifer Duncan, 6568 Towles Rd., Wilmington, NC, 28409; ncbar@bellsouth.net.

7. Depending on the number of submissions, the Publications Committee may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the committee. Contestants will be advised of the results of the competition. Honorable mentions may be announced.

8. The winning article, if any, will be published. The committee reserves the right to edit articles, and to select no winner and publish no article from among those submitted if the submissions are deemed by the committee not to be of notable quality.

Deadline is May 25, 2007

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Two Proposals for Consideration

BY STEVEN D. MICHAEL

Anyone who read my interview in the last issue of the *Journal* will recall that I decided to become involved in the State Bar some 11 years ago because of a letter to the editor in our local newspaper that criticized attorneys and the legal system. I decided then that I wanted to be a State Bar Councilor and work on improving the image of our profession. During the January 2007 quarterly meeting of the State Bar, the Issues Committee considered and forwarded to the Executive Committee two proposals which do exactly that.

The first proposal involves allowing pro bono practice by lawyers who have been granted inactive status. The request for consideration of this came from North Carolina's Equal Access to Justice Commission. Before his retirement, Chief Justice I. Beverly Lake Jr. and the North Carolina Supreme Court established the Chief Justice's Equal Access to Justice Commission. This body includes members from bar organizations, the judiciary, legal aid providers, the legislature, the business, philanthropic, and client communities, and the law schools. Under the leadership of Chief Justice Sarah Parker, the commission is energetically pursuing its vision to create deeper understanding and support within the bar, the judiciary, and the public for a diverse legal aid and access to the justice community throughout North Carolina. Their goal is to providrope benefits in the form of leadership, planning, and financial support in a variety of arenas.

The so-called Pro Bono Emeritus proposal gives the State Bar Council the ability to allow inactive lawyers approved by the council to render legal services to indigent persons in association with a legal services organization, and under the supervision of licensed attorneys who are employed by the legal services agency. The pro bono attorneys are excused from paying dues to the North Carolina State Bar, the Client Security Fund, assessment, and are excused from CLE requirements. The Issues Committee approved the concept as did the Executive Committee and the North Carolina State Bar staff is studying how this proposal might be implemented.

We have a large pool of very talented lawyers who, although inactive from practice, maintain the skills, knowledge, and desire to practice law. Everyone benefits from this program. Legal services will not only be able to serve additional people who cannot afford legal assistance, but the staff and legal services attorneys will also benefit from the experience and knowledge these lawyers bring to their offices. The volunteer lawyers are able to continue practicing their profession and have the added reward of giving something of value back to their community. The only question that occurred to me when this proposal came forward was why didn't we think of it sooner?

The second proposal that came out of the Issues Committee to the Executive Committee was that we consider a comprehensive (mandatory) IOLTA Program. This is not a new idea, but is one that has been percolating for some time. When I was elected vice-president of the State Bar in October 2005, I mentioned to the other officers that I would like to see the State Bar work towards mandatory IOLTA. Little did I know that I was giving my very good friend and outgoing president, Bud Siler, a topic for his last President's Message. He noted that he was a native of the mountains, and that mountaineers are a stubborn lot and do not like any authority telling them what to do. Most of us, like Bud, initially react negatively to anything mandatory. However, Bud clearly saw the benefit of the IOLTA Program, and expressed his desire that the program remain voluntary, and hoped to be able to get voluntary participation up to 90% of eligible attorneys. Despite Bud's optimism and the hard work of the IOLTA Board and others, we have

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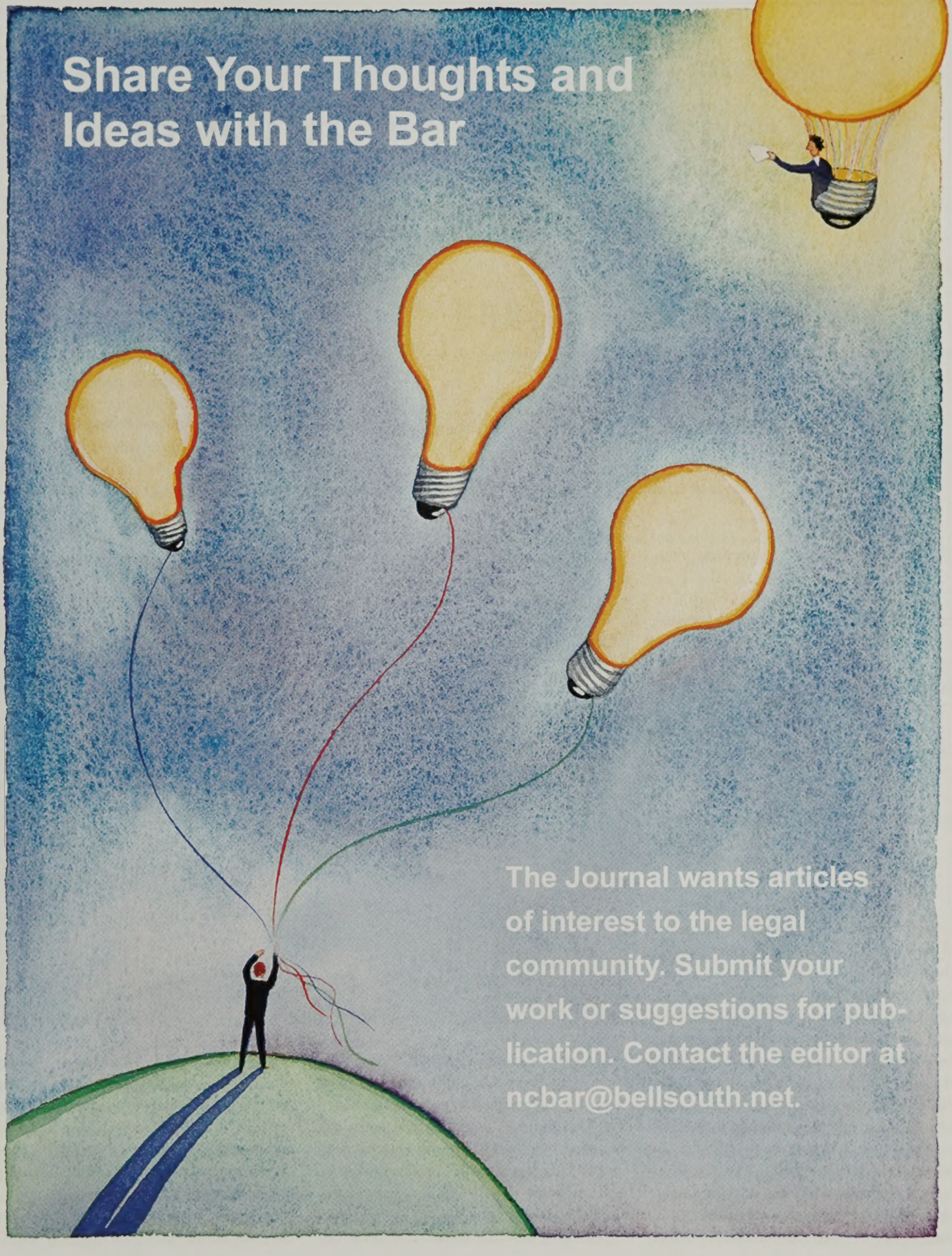
Share Your Thoughts and Ideas with the Bar



The Journal wants articles of interest to the legal community. Submit your work or suggestions for publication. Contact the editor at ncbar@bellsouth.net.

Ready or Not, A Gay Client May Be Waiting to See You

By Sharon Thompson

Your staff has scheduled an estate planning appointment for you. When you meet the client you discover that he is gay, that he has substantial individual and joint assets with a partner, and that he is raising two children who were adopted by his partner. Are you prepared to advise him about the legal and financial aspects of his property ownership? Are you able to prepare the appropriate estate planning documents? What advice should you give about his possible parental rights and how to protect them?


Getty Images

When I entered the legal profession 30 years ago, most new lawyers kept their sexual orientation a well-guarded secret, fearing the negative scrutiny of the local bar "character interview" and the possible denial of admission to the bar. Today, it is estimated that over 50% of law schools have gay and lesbian student groups (including most of the law schools in North Carolina), over 30% have courses on sexual orientation, and over 60% have openly gay faculty members.[1]

Being gay has now even become an advantage in the job market as major firms seek to support and enhance diversity among their attorneys and staff in order to remain competitive in today's job market.[2] Further evidence of increasing LGBT[3] recognition among law firms is found in the number of firms which provide domestic partner benefits. One estimate is that such benefits are provided by over 800 law offices, including at least nine large North Carolina law firms and probably many smaller, unreported firms.[4]

Not only have law schools and law firms changed, but so have many of our professional organizations. The American Bar Association has been very active in supporting legal issues that impact LGBT clients[5] and in providing resources so that attorneys can become knowledgeable and competent and offer quality representation to LGBT clients.[6] On the state level, North Carolina has had a statewide association of LGBT

attorneys and supporters since 1995 which has been very active in providing a network of support for attorneys practicing in this area and in presenting CLE seminars with national and state leaders to educate attorneys about legal issues affecting LGBT clients in our state.[7]

Thirty years ago, fear of the consequences of acknowledging one's sexual orientation led many individuals to never admit it—even to their lawyers and even if it was crucial information for an attorney to know in order to provide proper representation. Instead, parents gave up custody or agreed to limited visitation rather than face totally losing custody of their children in court; men arrested for the felony of a crime against nature faced the loss of their jobs, their families, and public humiliation. And life partners who could not face going to a lawyer to ask for a will leaving their estate to each other, lost everything when their partner died without a will and distant relatives inherited everything, including the right to evict the surviving partner from his or her home.

Today, with a gay character on TV most every night, with the growing awareness by gay couples of the need to legally protect themselves, and with the increased number of children being raised by LGBT parents, it's inevitable that soon you might find a gay or lesbian individual, couple, or family sitting in your conference room waiting for your legal advice. The numbers are telling. According to the 2000 census, there are 16,198 same-sex households in North Carolina, a 720% increase from 1990.[8] Applying the conclusion of one study which determined that even these figures underestimated the number of LGBT individuals in this country by at least 62%, there may be more than 26,000 same-sex households in North Carolina. [9] It is also estimated that one-third of lesbian couples and one-fifth of gay male couples are raising children, between one to nine million children have LGBT parents, the highest percentage of same-sex couples with children live in the South, and there are between 4,000 to 10,000 same-sex households with children in North Carolina.[10]

Contrast this burgeoning number of same-sex households with the number of families often assumed to be the typical American family—two parents and children living in the same household. According to a recent study commissioned by LexisNexis and *Redbook* magazine, only one-half of all US adults live with a spouse or opposite-sex partner and of that number, only 36% currently live with their biological children.[11] That translates into only 18% of all adults living with their spouse and children. In North Carolina, it is estimated that 144,000 unmarried couples live together.[12] Given these statistics about American families, with both same and opposite sex parents, perhaps we all need to adjust our thinking about what might be our typical family law client.

As lawyers in today's changing world, you will probably come in contact with someone who is gay in your professional life, either as a client or opposing party, a colleague, court personnel, law enforcement officer, or elected official. It is time to address our own feelings, our professional obligations, and our desire and ability to represent such clients. If you are comfortable and want to represent LGBT clients, then it is incumbent upon you to provide competent, knowledgeable,

and sensitive representation.

Professional Responsibilities

Unlike at least 16 other states which have language in their professional ethics codes prohibiting bias, prejudice, harassment, or discrimination based on sexual orientation,[13] North Carolina has no such provisions. In fact, North Carolina's rules have no such prohibition regarding discrimination in any form. Furthermore, North Carolina has no provision like those found in the Codes of Judicial Conduct of at least 32 other states which mention "sexual orientation," usually regarding a prohibition against acting with bias.[14] But, our first rule of professional conduct does state that a lawyer shall not handle a matter unless he or she is competent to do so and that competent representation requires "legal knowledge, skill, thoroughness, and preparation."[15] Before undertaking to represent LGBT clients in accordance with the level of competence required by this rule, attorneys need to examine their own feelings and level of comfort in dealing with such clients, look at the type of representation their firm is providing, and ascertain their level of knowledge about issues facing LGBT clients.

The language we use is one way to look at our own feelings and what we convey to others. As lawyers, we know the power language can have and its impact on a listener. We spend a great deal of time crafting language in documents, bringing lawsuits disputing language in deeds, wills, and contracts, and fine-tuning our trial arguments for a judge or jury. So, if speaking to a gay person or discussing a gay issue is something new to you, then learning about what is or isn't appropriate language is important. Consider the difference between saying "our firm *tolerates* gay clients" versus "our firm *supports* gay clients."[16] Learn not only what language your potential clients might find offensive, but also why. For example, "gay lifestyle" is seen as a derogatory term because gay people are as diverse as the rest of the population.[17] There are many websites and publications which provide useful definitions and explanations.[18] If you're not sure how to address someone or how to talk about an issue, just ask. People appreciate your honesty and your desire to understand and use correct terminology. Demonstrating respect by the language you use will go a long way towards making your clients or colleagues who may be LGBT, or anyone else who believes in LGBT equality, to feel comfortable and willing to open up to you. Three words that you should learn to use comfortably are the words that gays and lesbians use to describe themselves and their relationship: gay, lesbian, and partner.

It is also important to explore your own attitudes. If you are not comfortable relating to or working with gay individuals, or if you have religious or personal beliefs that prevent you from treating such clients with the same respect and dignity you would accord any other clients, then don't do it. If you find yourself as opposing counsel to a gay client, examine whether you can treat that person fairly and respectfully and not harass the other side or use exposure of a person's sexual orientation as a threat or intimidation to gain an advantage in the case.[19] It is also helpful to look at your understanding of what it is like to be gay, what it is like for a gay person on a day-to-day basis, and what privileges you might take for granted as a non-gay person. What would it feel like not to be able to put a picture of your loved ones on your desk, not to have access in a hospital to whom you consider family, or to hide who you are for fear of losing your job or your home?

If you undertake to represent LGBT clients, educate yourself thoroughly so that you will provide competent representation. Mistakes are easy to make if you are not well-versed in all the ramifications of an issue. For example, simply copying a form sperm donor agreement you have obtained would be poor representation if you do not know the answers to questions such as: whether our law recognizes any parental rights for a donor, whether the biological mother can sue the donor for child support, and how have such agreements been treated in other states.

Beyond your own individual representation of LGBT clients, look at your firm and its procedures. Imagine yourself as a lesbian or gay client coming to your firm's office. How welcome would you feel? Does your office intake form only ask if a client is married or single? Do all your forms repeatedly use the term spouse and not other options such as partner? How does your staff treat new clients? Review your office forms and procedures and train your staff if necessary to insure that your firm has a reputation of being respectful and sensitive to the needs of LGBT clients.

As one author noted, "If we are to fulfill our ethical duties, we must create a safe environment in which clients can disclose confidential information, protect our clients from our bias or that of others, be knowledgeable in substantive areas of the law, and treat our clients with dignity and respect."[20]

Specific Areas of Law

Whether unique legal treatment is warranted when representing unmarried same-sex or opposite-sex clients[21] must be considered in almost any area of law—from family law, estate planning, and transactional matters to housing, employment, and criminal law. In most instances, there is no specific North Carolina law that addresses unmarried couples, and in order to provide adequate and helpful advice, an attorney needs to be familiar with the laws in other states, the national trend in a specific area, or proposed uniform codes which might be helpful.

There are a few areas of law which impact most LGBT clients. The sidebar on page 10 provides basic information and suggestions so you will be prepared to advise your first LGBT client.

Conclusion

As statistics and social history are demonstrating, the number of people who are in unmarried relationships or creating different forms of family will continue to significantly grow. In order to provide these individuals with the best legal representation, attorneys need to be knowledgeable about the relevant law, creative in pursuing new legal approaches, and personally comfortable with representing same-sex clients. If you are such an attorney, you will find it extremely rewarding to assist such potential clients, not only in protecting their property interests and their estates at death, but most importantly, in helping them and their children stay together in their chosen families. Your support will be welcomed by the LGBT community in this state. ■

Sharon Thompson has been practicing in North Carolina for over 30 years in the areas of family law and estate planning. She particularly enjoys working with LGBT clients. In 1978, she co-founded the NC Association of Women Attorneys, and in 1995 she co-founded the NC Gay and Lesbian Attorneys Association. Ms.

Thompson also served in the North Carolina General Assembly from 1987 through 1991.

For links to LGBT legal resources, see the website of NC GALA, www.ncgala.org/Sites_of_Interest.htm.

Endnotes

1. "A Lawyer Class: Views on Marriage and Sexual Orientation in the Legal Profession," William C. Duncan, BYU Journal of Public Law, 15 BYU 137, 164-177 (2001).
2. See, for example, the website for National Lesbian and Gay Lawyers Association, an affiliate of the American Bar Association, which sponsors a national conference each year for LGBT attorneys and law students that includes a job fair with well over 60 law firms, www.nlgla.org.
3. Many terms are used to describe persons who express sexual or gender identities that differ from male/female heterosexuality. In this article, the terms "lesbian or gay" or "LGBT" (lesbian, gay, bisexual, and transgendered) will be used to include all such persons.
4. See the National Association of Legal Career Professionals Directory of Legal Employers at www.nalpdirectory.com.
5. The ABA has approved resolutions in support of adoptions by unmarried persons who are functioning as a parent, opposed restrictions on foster care placement on the basis of sexual orientation, opposed amending the federal constitution to restrict states' ability to define marriage, and urged the federal and state governments to enact legislation prohibiting discrimination based on gender identity or expression in employment, housing, and public accommodations. See American Bar Association, Policies Adopted by the ABA House of Delegates, Chapter 13, www.abanet.org/policy/policies_adopted_ABAhouse_of_delegates06-07.pdf.
6. ABA divisions, such as the General Practice, Solo & Small Firm, Family Law, and Estate Planning, have sponsored several CLEs, put articles on their website, and published books on subjects related to representing same-sex couples. See www.abanet.org, Estate Planning for Same-Sex Couples, www.ababooks.org.
7. NC Gay and Lesbian Attorneys Association (NC GALA). See their website at www.ncgala.org. There is also a nonprofit organization, the NC GALA Institute for Equal Rights, which works with law students and volunteer attorneys to provide education, information, and resources to the state's LGBT community.
8. David M. Smith and Gary J. Gates, Ph.D., *Gay and Lesbian Families in the United States: Same-Sex Unmarried Partner Households, A Preliminary Analysis of 2000 United States Census Data,* a Human Rights Campaign Report 4, (2001).
9. *Id.* at 3.
10. Married—Couple and Unmarried—Partner Households: 2000, Census 2000 Special Reports, US Census Bureau, February 2003.
11. http://research.lawyers.com/common/content/print_content.php?articleid=1039364&
12. www.wral.com/print/9549145/detail.html.
13. Duncan, supra at 159-163.
14. Duncan, supra at 148.
15. Rule 1.1, NC Rules of Professional Conduct.
16. Susan Ann Koenig, "Fulfilling Our Ethical Duties—Regardless of Client Sexual Orientation: Considerations in Meeting the Needs of Our Gay and Lesbian Clients," The Nebraska Lawyer, April, 1999.
17. Media Reference Guide—Offensive Terminology to Avoid, Gay & Lesbian Alliance Against Defamation (GLAAD), www.glaad.org/media/ guide.
18. See Stylebook Supplement on Lesbian, Gay, Bisexual, & Transgender Terminology, www.nlgja.org/resources/stylebook_english.html; Gay, Lesbian, and Bisexual Issues, www.healthyminds.org/glbissues.cfm; Responsible Representation of Your First Transgendered Client, www.texasbar.com/Content/ContentGroups/Publications3/Journal/2003/July.
19. The preamble to our Rules of Professional Conduct states that a lawyer should not use the law "to harass or intimidate others" and a lawyer "should demonstrate respect for the legal system and for those who serve it."
20. Koenig, supra. See also, Amy Miller, "Professionalism and Sexual Orientation," The Nebraska Lawyer, January, 2004.
21. In most instances, the same legal issues apply to all unmarried couples, regardless of whether they are opposite or same sex. The major differences are that only opposite-sex couples can marry in this state and a male opposite-sex partner can establish biological and legal paternity, while a same-sex partner has limited options in establishing parentage of his or her partner's child.

What You Can Do to Provide Legal Protections for LGBT Clients

Ownership of Property

Create joint ownership if appropriate: after explaining the pros and cons of joint ownership (such as access, liability, right of survivorship if specifically stated), put both names on property the clients want to jointly own such as bank and investment accounts; beware of gift tax issues, valuation at death, and how property would be divided upon separation of the parties. Another option is to create "payable on death" accounts for bank and brokerage accounts.

Carefully consider how automobiles should be titled: sometimes individually is best in order to avoid joint liability or joint debt, and there are fewer problems if the parties separate.

Real property ownership: explain differences between tenants in common and joint tenants with right of survivorship, including tax and inheritance consequences, and rights and options if parties separate; select ownership form that best meets clients' financial needs or possible family challenges if property passes through will rather than survivorship; suggest purchase money deed of trust with possible annual gifting if one partner wants to add the other to a deed and one-half the equity is more than yearly gift tax exemption.

Retirement and life insurance: discuss importance of naming desired beneficiaries, both primary and secondary, and the pitfalls of naming the estate; know the options available at the death of partner for the surviving partner who is named as the retirement account beneficiary, including the significant changes in the Pension Protection Act of 2006 which for the first time allows nonspouses to roll over retirement accounts to their own IRA.[1]

Carefully consider gift and capital gains tax consequences in any property transfer between partners: remember that any gifts between partners may be subject to federal and state gift taxes and NC is one of only a few remaining states which make distinctions between donees based on family relationship and imposes the highest tax on gifts to Class C donees (distant family members and persons unrelated by blood).[2] Also consider the future capital gains tax possibilities of any gift transfer and whether there are other options which will create a step-up in basis.

Domestic partnership agreement:[3] clarifies how property is owned between partners, how property would be divided if relationship ends, and how to determine value and what legal principles shall be applied in determining division of property, possible waiver of right to partition, whether parties have any other claims for support, and alternative dispute resolution options.

Division of property upon separation: know possible remedies available such as contract and equity principles, consulting and resulting trust, quantum meruit, estoppel theories, and how to value each partner's interest in property;[4] consider and suggest best options for out-of-court resolution of dispute.

Estate Planning[5]

Health care power of attorney and living will: allows individual to designate partner as agent to make medical decisions; add provision stating that agent shall have first priority to visit in hospital; add HIPPA releases; use state regulations which prohibit discrimination against patients based on sexual orientation if any problems arise.[6]

Power of attorney: make sure there are no references in office forms to "spouse," nor limitations of powers to only spouses; provide that agent, not family, be consulted by medical provider in any determination of incapacity.

Last will and testament: specifically provide that partner is to make funeral arrangements;[7] detail family relationships, including relationship with partner's children if partner is appointed guardian of children; acknowledge joint ownership or personal property, forgive any outstanding loans between partners, and acknowledge that testator or testatrix is fully aware of what he or she is doing and desires to leave estate to partner or friends and not family.

Revocable living trust: helpful mechanism to take property out of client's estate and avoid possible challenges to will; also provides privacy and is useful for more complex distribution of assets such as to partner first, then family of client.

Minimizing estate challenges: explore with client whether there might be any family challenges to will and how best to protect surviving partner; if challenge is serious possibility, do not represent both partners, but if you do represent both, have them sign a joint representation letter.

Tax issues: without the marital deduction option and taxable gift transfers, it is difficult to do tax planning for the deaths of unmarried couples; explain limited options, pros and cons of credit shelter trusts especially if no children who would benefit, and possible need for a life insurance policy to cover cost of any inheritance taxes.

Establishing Parentage[8]

Donor insemination and surrogacy agreements:[9] establishes rights between the parties and clarifies that donor or surrogate has no parental rights or responsibilities and prospective parents shall have all legal rights to any child; useful in any future dispute regarding custody and supports argument donor or surrogate knowingly and fully relinquished parental rights.

Parenting agreement: clarifies rights and responsibilities of both parents, the biological or initial adoptive parent and co-parent who otherwise has no legal parental rights, both while in a relationship and to provide for custody and support if relationship ends; include provisions waiving legal parent's paramount rights and requiring nonlegal parent to provide child support; although court not bound by agreement, it is helpful as

evidence of parties' intent regarding raising a child together and effect on child if access to nonlegal parent were denied.

Minor's health care power of attorney:[10] is signed by legal parent and authorizes parent without legal parental rights to make medical decisions for his or her child.

Guardianship in will: important to not only appoint nonlegal parent as guardian but also, since clerk of court has discretion regarding who is actually appointed, add provisions explaining relationship to child, how partner has been raising child from birth, etc. and why it would be in best interests of child for partner to be guardian.[11]

Securing additional rights for nonlegal parent: consult with knowledgeable family law attorneys about other possible documents and legal procedures for establishing rights for partner who has no existing legal ties to his or her partner's child.

Resolving Custody Disputes

Disputes between formerly married parents: know latest case law, argue that nexus must be shown between parent's sexual orientation and effect, if any, on child;[12] find out about similar cases that might have been decided in your local area; remember no appellate case has been decided since *Lawrence v. Texas*[13] and a superior court ruling that our cohabitation statute is unconstitutional.[14]

Disputes between same-sex parents:

National trends: know what theories are being used in other states to establish legal parentage for a partner who did not adopt or who is not genetically related to child he or she has been raising, including equitable parenthood,[15] "intended parenthood" concept under the Uniform Parentage Act, and the definitions of parent and the factors to consider by a court in determining parentage contained in the American Law Institute (ALI) Principles of the Law of Family Dissolution: Analysis and Recommendations (2000).

North Carolina:[16] if representing nonlegal parent and court does not find client to be a legal parent based on above theories, then argue client has standing based on *Ellison v. Ramos*,[17] that legal parent has acted inconsistent with his or her paramount parental rights citing *Price v. Howard*,[18] and that it is not necessary to show unfitness on the part of the legal parent pursuant to *David N. v. Jason N.*[19]

Child support: nonlegal parent may be secondarily liable for child support pursuant to N.C. Gen. Stat. §50-13.4(b) as a person "standing in loco parentis..."

Endnotes

1. Pension Protection Act of 2006 (P. L. 109-280).
2. N.C. Gen. Stat. §105-188.
3. Although there is scant N. C. law on this subject, it can be inferred that our state stands with the majority of other states regarding property rights and remedies for unmarried couples. *See Lee's North Carolina Family Law,* Chapter 4, Nonmarital Living Arrangements (S. Reynolds 5th ed. 2002). No rights are established simply by cohabiting and the courts will not apply our domestic laws upon dissolution of an unmarried relationship (although the parties could agree that a mediator or arbitrator do so). No court has directly recognized a contract based solely on the relationship between the parties and, of course, any contractual agreements that appear to be based on sexual services would be void as against public policy. *See also* William A. Reppy Jr., *Cohabiting Couple's Property Rights and Conflicts of Laws,* and T. Michael Godley, *Co-ownership and Domestic Partnership Agreements,* both in *Emerging Legal Issues: Non-Traditional Families,* (NC Bar Foundation Continuing Legal Education, April, 2004).
4. *Suggs v. Norris,* 88 N.C. App. 539, 364 S.E.2d 159, *cert. denied,* 322 N.C. 486, 370 S.E.2d 236 (1988); *Patterson v. Strickland,* 515 S.E.2d 915 (N.C. App. 1999), 2003 N.C.App LEXIS 429 (2003), unpublished opinion; *Wike v. Wike,* 115 N.C. App. 139, 445 S.E.2d 406 (1994); *Thomas v. Thomas,*102 N.C.App. 124, 401 S.E.2d 396 (1991).
5. See the website of the Elder Law Clinic at Wake Forest University School of Law for a resource list about estate planning for same-sex couples, http:// www.law.wfu.edu/x5468.xml.
6. N.C. Admin. Code 13B.3302.
7. *Dumouchelle v. Duke University,* 317 S.E.2d 100 (1984), testamentary provisions directing disposition of testator's body prevail over conflicting wishes of next of kin and are valid prior to probate of will.
8. When a married woman gives birth, her husband is legally presumed to be the father of her child. When an unmarried heterosexual woman gives birth, paternity of the father can be established through DNA testing and a paternity order thereby establishing the father as a legal parent. When same-sex couples decide to have children, either through adoption or assisted reproduction, establishing parentage of the child becomes a complex maze of medical and legal procedures. Whatever method is used by a same-sex couple to create their family, only one partner is initially able to be a legal parent.
9. There is no NC statute or case law specifically addressing unmarried couples or single women who bear children through donor insemination, nor is there a statute that defines the parental rights or obligations of a sperm or egg donor, nor any statute, civil or criminal, mandating the supervision of donor insemination by licensed physicians and no statute prohibiting surrogacy or surrogacy contracts.
10. N.C. Gen. Stat. §32A-28.
11. N.C. Gen. Stat. §35A-1225 provides for such a testamentary appointment and "*...such recommendation shall be a strong guide for the clerk in appointing a guardian, but the clerk is not bound by the recommendation if the clerk finds that a different appointment is in the minor's best interest.*"
12. *Pulliam v. Smith,* 476 S.E.2d 446 (1996); rev'd 501 S.E.2d 898 (1998); *Marshall v. Sizemore,* 493 S.E.2d 89 (1997); *Epperson v. Epperson,* 536 S.E.2d 366 (2000); *Shipman v. Shipman,* 586 S.E.2d 250 (2003), case does not involve gay parents, but our Supreme Court held that the effects of a change in circumstances, including a change in a parent's sexual orientation, on a child's welfare "...are not self-evident and therefore necessitate a showing of evidence directly linking the change to the welfare of the child." *Id.* at 256.
13. US Supreme Court case invalidating application of sodomy statutes to private consensual sex, 123 S.Ct. 2472 (2003).
14. *Hobbs v. Smith,* 05 CVS 267, Pender County; unpublished opinion decided Aug. 25, 2006.
15. T. Fowler & I. Nelson, *Navigating Custody Waters Without A Polar Star: Third-Party Custody Proceedings After Petersen v. Rogers and Price v. Howard,* 76 N.C.L. Rev. 2145, at 2206 (1998).
16. To date, there are only a few cases which have been decided at the trial court level in North Carolina, one of which is now on appeal. In at least three cases, the co-parent was found to be a legal parent and a best interests standard was applied in awarding custody to both parents. In one of these cases, the trial court ruled, based on *Price v. Howard,* that the biological mom had relinquished her paramount rights by consenting to the partner's adoption of the child in another state. In only one known case has a court ruled that the co-parent was not a legal parent and did not show that the legal parent had relinquished her paramount rights.
17. "Where a third party and a child have an established relationship in the nature of a parent-child relationship, the third party does have standing as an 'other person'...to seek custody." 502 S.E.2d 891, 895.
18. *Price v. Howard,* 346 N.C. 68, 484 S.E.2d 528 (1997).
19. *David N. v. Jason N.,* 608 S.E.2d 751 (2005).

Some Thoughts on Lying, Cheating, and Stealing

By John Winn and G.S. Crihfield

The Anglo American tradition created three professions: the clergy, the law, and the military. In the 19th century, the medical profession joined the three traditional professions to constitute the professional world we know today. Persons engaged in the learned professions were expected to conduct themselves in an honest and honorable manner and exercise sound and impartial judgment even in very critical situations. As with most theories concerning standards of conduct, there are circumstances where members of professions stray from their strict obligations of candor and honesty to their constituents.


Steve Dininno/SI

The North Carolina Rules of Professional Conduct in Rule 8.4(c) state it is "professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."[1] Lawyers hold a place of privilege, special trust, and confidence in society. Violations of the Model Rules of Professional Conduct that involve culpable deception, dishonesty, or theft which occur within the course and scope of professional duties cause disproportionate injury to public confidence and overall respect for the legal profession.

At a less dramatic level the issues we raise in this article continue to diminish public respect for lawyers. A recent Columbia Law School poll found that four in ten Americans viewed lawyers as "essentially dishonest."[2] Lawyer jokes, many deeply contemptible, reflect poorly on an honorable profession. At best, the public sometimes views us as no more than a "necessary evil." At worst, we are considered devious, mercenary, arrogant, and money-grubbing. A recent letter to the editor of the *Greensboro News and Record* even described us as "blood suckers."

Thankfully, the vast majority of lawyers act with honesty and candor. Good lawyers remain unencumbered by fear of sanctions and embrace the rules of professional conduct as being essential to preserve the public's trust. Michael Josephson noted that "though the adversary system promotes the

vigorous pursuit of victory, it does not give the lawyer any moral dispensation for use of dishonorable, dishonest, or disrespectful tactics simply because they are permitted."[3]

Unfortunately, some believe the North Carolina State Bar has not done enough over the years to effectively remove bad apples from the profession. (Since 2001, the DHC has disbarred 42 lawyers, and 33 lawyers have surrendered their license.) Generally, North Carolina has a good record in disciplining its attorneys. A recent article in *Lawyer's Weekly* raised the issue of whether stealing from a trust account was a "death sentence" for being able to practice law again.[4] Most disbarred lawyers in North Carolina have considerable difficulty in receiving their licenses anew after being disbarred. (Since 2001, the DHC has not granted reinstatement to any of the eight lawyers who have petitioned.) On the other hand, the State Bar has worked hard to suspend lawyers from practice and stay the suspension on conditions the lawyer cure those specific shortcomings leading to the grievance.

The Grievance Committee, however, also occasionally receives responses from lawyers with respect to complaints filed against them under the Rules of Professional Conduct which, of themselves, appear to be, or are, false or seriously misleading. Arguably, the Grievance Committee should respond vigorously in such circumstances. Dishonesty of this nature casts an immediate pall on both the grievance process and the legal profession at large. Often enough, the seriousness of these deceptions exceed *in gravamen* the underlying grievance to which the lawyer is responding. The State Bar has a rule which can trigger a grievance, *sua-sponte*, should a lawyer submit potentially false or misleading information in a response to an initial inquiry by the Grievance Committee as a part of any State Bar disciplinary proceeding.[5]

Another area of concern is the number of attorneys disbarred for misconduct who seek reinstatement. In some jurisdictions, reinstatement has become a virtual "revolving door."[6] Nationwide, nearly half of suspended and disbarred attorneys who apply nationwide gain readmission to the bar.[7] Not surprisingly, these "bad apples" subsequently tend to accumulate additional sanctions despite previous disbarment.[8]

To address these concerns, at least in part, an additional proposal might include a requirement in North Carolina that all disbarred or attorneys suspended for violations of 8.4(c) seeking reinstatement retake and pass the Model Professional Responsibility Exam (MPRE) prior to readmission. This constitutes a demonstration of minimal acquaintance with those standards which may have led to disbarment or suspension. Retaking an ethics examination, however, should be only one component of a process coupled with other conditions that the Disciplinary Hearing Commission often imposes.

Truth and honesty in their greatest perfection can occasionally be difficult. While minor lapses and shortcomings are not uncommon, they should not be condoned. Nevertheless, some misconduct, while clearly wrong, may not rise to a level which merits the drastic remedy of disbarment. For these reasons, exceptions should be made for defined minor violations of Rule under Rule 8.4(c), especially when there has been prompt remediation and candor by the lawyer as appropriate.

The North Carolina Chief Justice's Commission on Professionalism together with the State Bar and the North Carolina Bar Association has taken the lead nationally to promote professionalism and keep these issues before the members of the Bar on a regular basis. Likewise, the State Bar requires a one hour CLE program on mental health and substance abuse issues, frequently found to be an underlying cause for misconduct on the part of attorneys.

Justice Tom Clark noted almost 30 years ago that unless the Bar embraces "a spirit of honesty and decency and unless it is inspired to insist upon the exercise of the highest ideals in the practice of law, then no disciplinary system can be effective and no code of professional conduct will be anything more than a hypocritical farce."[9] As a profession, we must all keep before us our sacred obligations to the public to meet those requirements of conduct. To these ends, it is our hope that this article will generate discussion among members of the profession and the members of the State Bar Council to consider these issues. ■

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Endnotes

1. Rules of Professional Conduct of the North Carolina State Bar (2004), Rule 8.4(c)
2. Lawyers and the Legal Profession, a Columbia Law Survey, April 2002, Press Release, Columbia Law School, April 17, 2002.
3. Michael Josephson, Commencement Address, Pepperdine University School of Law, May 18, 2001, (Josephson Institute).
4. *Lawyer's Weekly of North Carolina*, January 9, 2006.
5. Rules and Regulations of the North Carolina State Bar (2003), Section .0107 (3).
6. Ann Davis, "Toughening Readmission Procedures," N.L.J. (August 5,12, and 19, 1996) (three-part series).
7. 2002 Survey on Lawyer Discipline Systems, ABA Center for Professional Responsibility.
8. Terry Carter, "Lawyers Who Lose Their Licenses For Fraud or Other Misconduct Can Win Reinstatement if They Practice in the Right State," 89 ABA Journal 56, (2003).
9. Tom C. Clark, "Teaching Professional Ethics,' 12 San Diego L. Rev. 249, 252 (1975).

Lessons in Disaster Planning

By Carl Younger

For many residents of Louisiana and Mississippi, August 29, 2005, is bitterly carved into their memories. Hurricane Katrina came ashore with rain, winds, and a storm surge that destroyed entire towns and severely weakened the levee system that protected New Orleans. The eventual breaches of the levees allowed a majority of the city of New Orleans to flood. Damages to the region have been estimated to be $84 billion. Those estimates do not include the disruption of oil and natural gas supplies or shipping interruptions for movements of products through the port of New Orleans. No estimates exist for the individual losses and the impacts of dislocations for entire communities and almost half of the population of New Orleans.


Paul Anderson/SIS

Over 1,883 people died. Over 700 are still missing. Louisiana and Mississippi know how to define disaster in a single word—Katrina.[1]

North Carolina also knows a single word for disaster—Floyd. During the late summer and early fall of 1999, a series of Hurricanes—Dennis, Floyd, and Irene—dumped almost 40 inches of rain over parts of Eastern North Carolina. The Tar River flooded parts of Rocky Mount, Tarboro, and Greenville. The proud town of Princeville was largely destroyed. Over 7,000 homes were destroyed, over 17,000 were rendered uninhabitable, and over 56,000 were damaged. Total losses for North Carolina were estimated to exceed $4 billion, with 35 people losing their lives.[2]

A New Awareness—Disaster Planning

The impact of Katrina and other major storms, such as Floyd, has produced a new awareness among businesses, including lawyers and law firms: the need to create plans on how best to respond to disasters. However, lawyers have recognized that disasters occur in many different forms and affect attorneys who are not in areas potentially impacted by hurricanes, tornados, earthquakes, or other natural disasters. Disasters for law firms occur when a major disruption occurs in the normal operation of the firm. Would you consider the following to be a "disaster?"[3]

- A firm laptop with sensitive client information is lost or stolen, or the entire firm computer system "crashes" and cannot be restarted.
- A key firm assistant departs without warning (perhaps having won the North

Carolina education lottery).

- A lawyer in the firm unexpectedly becomes severely ill or disabled.
- The law firm's offices are destroyed by fire, a hurricane, or some other natural disaster.

While all of these events are disasters, each has unique responses and solutions. The adverse impacts of various types of disasters can be lessened or even eliminated IF certain precautions are taken.

Become a "Smart" User of Data Processing Services

The most common disaster for a law firm is not a flood or hurricane but a disruption of its data processing systems. Systems can break down. Computers can become "inoperable" or worse, they can be stolen. However, if care is taken, and a minimal investment made in the protection of equipment and the data stored on a system, most major disruptions— the disasters—can be avoided.

1. Make Prudent Investments in Your System. Changes in electric currents can either "fry" your equipment or delete unsaved data or programs. Put surge protectors on all computers, servers, and printers. Have battery backup for all equipment (except for laser printers—they require too great a battery load).[4]

Recognize that computers and software "age." Unlike attorneys, they do not acquire wisdom as they age; they only increase in their potential to produce an outage or crash. Remember to replace hard drives every three to four years and maintain all media used to store data in a cool and dry location.[5] Purchase updates for all software systems that you use. Locate, in advance, a specialist who can help you with hardware and software problems.

2. Create a Plan and Procedures that Protects Firm Information. At least weekly a story is found in the news about a lost or stolen computer containing large amounts of confidential information. The loss of a laptop containing information on over 25 million veterans from the Veterans Administration was one of the most shocking stories of this type.[6] What can be done to help protect information on your computer and computer system?

a. Limit the amount of information, especially sensitive information, that is stored on any portable device, whether a laptop or a PDA.

b. Install anti-theft software that "locks" the computer after a set number of attempts to access the system.

c. Create "strong" passwords—eight digit passwords using lower case, capitals, numbers, and symbols.

d. Periodically "back up" all data on a computer or computer system.[7]

Many firms will "copy" their system at the end of each day and remove the copy to an off-site location. In situations where the volume of information is extremely large, a firm might hire an on-line service to provide "back-up." For single computer back-ups, technology has evolved so as to allow storage of significant amounts of information on a "thumb drive." Whatever system is used, have a set schedule for copying the information, obey the timing of the schedule, and store the data in a cool, dry place "off-site." The ability to recreate one's systems and the data on those systems will greatly accelerate a firm's ability to recover quickly from any disaster.

Contemplate Life Without Your Assistant

No good attorney or law firm can function effectively without a competent staff. Many attorneys are able to expand their practice by having staff perform needed administrative functions. However, the long term success of a lawyer is dependent on flavoring staff dependency with the salt of effective oversight. Too often an assistant or paralegal leaves a firm and carries their information monopoly with them. How can the prudent attorney or firm prepare for such departures?[8]

1. Create a Firm Manual. Each firm, even a solo, should have a manual that describes how the firm operates, from the opening of mail and the answering of phones, to how bills are prepared and financial accounts are handled. In larger firms, the manual should show the names of individual attorneys, their location in the firm offices, and their assistants or paralegals. General administrative staff should be shown separately with a general description of their responsibilities. While the chief administrative assistant in a large firm will most likely maintain the "firm manual," parts of the manual should be made available to all attorneys and staff.

2. Have Multiple Holders of Computer Passwords. Certain processes call for general secrecy, such as separate, unique passwords held by different individuals for a two password system to initiate financial transactions (e.g. wire transfers). However, general computer access passwords for most firm computers should be held by more than one person. The absence of a key employee should not prevent an attorney, or a firm, from access to a key document, whether a pleading, a contract, or a schedule. While limiting the number of individuals holding passwords is good, limiting computer access to a single person simply guarantees that a problem will occur.

3. Create Multiple Levels of Review for All Financial Systems. Attorneys have special obligations to maintain the financial integrity of their trust accounts. Attorneys also have an obligation to themselves and their firms to insure that their internal accounting systems are operating properly. Even in a solo practice, there can be checks and balances: if an assistant prepares all checks, the attorney should physically sign all checks. Do not allow use of a signature stamp. Have all accounts of the firm audited at least once a year, particularly in connection with the preparation of tax returns for the firm. Do not tempt that trusted employee with the opportunity of spending the rest of their life on the sunny beaches of the Caribbean with your money or client funds.

4. Create and Maintain a Firm Wide Calendar. With PDA's and calendars on our software systems, the days of scheduling problems and missed deadlines would seem solved. The days when an assistant kept a calendar of needed hearings and pleadings "in their head" would seem to be a historical curiosity. Unfortunately, even good systems must be used and must be available for all to see. If an attorney and his or her assistant are absent, the firm needs to know what matters require immediate attention. The information monopoly of individual calendars must be eliminated in the same way that mentally retained calendars have been superseded by computer based systems.

Value your employees. Be thankful for the wonderful support staff that you have. However, do not be a prisoner of their knowledge or expertise. Create an environment that is not dependent on any single person.

When an Attorney Departs—Unexpectedly

As noted above in reference to staff departures, no single person—including an attorney—should have a monopoly on firm information. The protections that apply to employee departures likewise apply to attorney departures. However, unique professional responsibilities are placed on each of us as attorneys: we need to create a plan to address how our practice will be handled if we are unable to provide competent service to our clients. Furthermore, such a plan should consider impacts to one's

firm—including staff, to one's family, and to the profession.

Within a multi-attorney firm, plans should exist regarding how matters are to be reassigned within the firm if an attorney cannot practice for any extended period of time. Special attention should be given to the competence and practice burden of any replacement attorney as well as the wishes of affected clients. Engagement letters should advise clients of the right of a firm, or even an individual lawyer, to designate a replacement attorney to handle matters in the event of death, disability, or incapacity. Furthermore, if substitution of counsel must be made, the firm or the replacement attorney should advise the affected clients of such replacement and include any publicly available information as to the circumstances that required the use of the new attorney.

1. A Special Issue for Sole Practitioners. The American Bar Association has indicated that a sole practitioner should have a plan for addressing a personal absence from practice.[9] *See* ABA Formal Opinion 92-369. Both the ABA and various bar associations (e.g. Arizona State Bar Opinion 04-05 (2005)) have procedures for protecting clients through the introduction of a replacement attorney. What should that replacement process consider?

a. Designate and empower an attorney who is competent in the same areas of practice.

b. Execute an agreement that provides the scope of the replacement attorney's authority, designates the procedures to be followed if the replacement must act (including having an audit of all trust and firm accounts before the other attorney begins handling matters for the firm), and provides for the confidential treatment of firm and client information.

c. If substitution of counsel is formally required for any pending matters, attach a copy of the "Replacement" agreement to show the condition under which the attorney has been called to act and the agreement of the other attorney to the actions in question. Also attach and highlight the provisions of the engagement letter approving the substitution of counsel provision.

A replacement attorney needs to understand that any "clients" of the other attorney become clients of the substitute attorney once he or she begins to work on their cases. Thus, as soon as the replacement attorney receives a clean bill of health on the trust and firm accounts, he or she should review the files to see if the substitute attorney is free of conflicts on these matters and can competently perform the work required.

2. Remember that Others Are Affected. The impact on clients, and the need to keep clients informed, is certainly important. However, attorneys should also be aware of the impacts of any dislocation in their lives on their family and their staff. Each group should be informed of the plans being made by the attorney (or firm for the attorney). In particular, a spouse may need access to individuals with the various bar associations, information regarding applicable insurance carriers and their policies (including the professional liability carrier), a summary of how one's office and practice are to be maintained—both practically and economically, and how one might "wind-up" one's practice if required by death or extreme disability. Members of one's staff are especially affected by any "wind-up" discussions or desires and should understand the arrangements that are proposed for everyone associated with the practice.

As a professional, one needs to address how matters affecting one's clients are to be handled. As the owner, or part owner, of a business, one needs to focus on the economics affecting one's firm. As a member of a family, as a wife or husband, special attention needs to be given to providing as much advanced planning as possible to make any unexpected departure from practice less traumatic to those who are closest to you.

What Happens When the Wind Blows and the Creeks Rise

A new awareness of the need for disaster planning is a direct result of the personal experiences of many on the Gulf Coast—both good and bad—as a result of Katrina. Actions can be taken to eliminate many computer based problems. Plans can be created to lessen the impact produced when staff or attorneys are absent. However, you cannot prevent a hurricane from destroying your office or town, if one strikes, or a flood from inundating your office. Disaster planning for significant natural disasters involves creating a process that allows for the most rapid and complete recovery possible.

1. Have All Members of Your Firm Create a Personal Plan. Based on their experience with Katrina, Gulf Coast businesses discovered the operations that recovered most rapidly were ones staffed by employees who had their "own house" in order. As a result, encourage each person in the firm to create their own disaster plan by assembling needed information and documentation for emergency survival. Create a personal data listing of all phone numbers, social security numbers, insurance policies and contacts (including home, automobile, and professional liability), emergency response locations and phone numbers, and the addresses and phone numbers of close relatives in other locations or states.[10] The more individuals do for themselves in advance, the greater their ability to solve their own personal problems rapidly and to focus their attention on helping the firm recover.

2. Counting Sheep—Inventory Firm Assets. Before you can file an insurance claim for property damage, you must be able to describe your property. Take pictures or make a video: this provides a visual record from which an inventory listing can be developed. Keep the pictures and the physical listing in a safe place outside your office. You may want to consider having a copy of these materials stored on an exchange basis with another attorney in a different town or city. If you have the capability, scan your inventory listing and place that list on your computer (laptop if possible).

3. Water and Documents Don't Mix. Most law offices continue to depend on paper. Paper does not like water. If your office experiences problems with water (and this can even be from your office sprinkler system), contact your property insurance carrier and obtain their recommendation on the firm you should contact to help with document restoration. Remember that you want to have special protections for certain documents— originals of contacts or other special client documents and your insurance policies.[11] As with the listing of firm assets, scanning these documents into your computer system (and being able to take that system with you in your laptop or in a "thumb drive") will save you substantial heart and headaches later.

4. Have Alternative Supplies and Equipment. If your office is completely or partial destroyed or damaged, you may have lost all or most of your supplies and may not be able to use your computers or computer system. Have an offsite "treasure chest" of firm forms, stationery, billing records, and invoices. Consider having a small number of checks stored with these materials. If checks are placed with these materials, insure that the materials not only are in a safe place, but also are secure

from theft. Know where you can quickly locate replacement phones, computers, and support equipment (such as a printer). The fastest way to obtain substitute equipment is often to ask members of the firm to bring home computing systems to the office. Depending on the scope of the disaster, you may be able to quickly obtain substitute equipment from an online vendor (such as Dell). Remember, while insurance might pay for a portion of the replacement costs, you may want the option of using older equipment for a short period of time and applying funds from damaged equipment to an upgrade in your system or even to create a new system (such as substituting a laptop for a desktop computer). If possible, make arrangements within your current system to have fax transmissions appear as emails on your computer and have the capability of sending a fax directly from your computer.

5. Alternative Offices. You cannot predict all of the office space that may or may not be available following a disaster. However, as part of your plan, consider if any client would be willing to have you work from their offices for a short period of time or if any attorneys in your town or a nearby city would be willing to allow you to relocate to their offices. Reciprocal arrangements regarding substitute office space are often a reasonable way to insure that space, even if limited, will be available.[12]

6. Ready, Set, Implement. One of the primary reasons for undertaking detailed planning is to allow a firm to begin operating as quickly as possible after a major disaster. Attorneys know that time is money. Thus, reopening the firm often slows the adverse financial impact associated with the disaster. The Disaster Plan itself should designate a "person in charge" and his or her "backup." The plan should also provide where the firm is to "assemble" following the disaster and who is responsible for various tasks in the reestablishment of the firm (e.g. supplies, offices, equipment, office, etc.).[13] As soon as offices are located and equipment is in place, members of the firm should contact the post office, the courts, opposing counsel, and one's clients. As a general method of informing others, many Gulf Coast law firms carried daily updates of their progress of relocating and reopening, including details of their new location and phone numbers—all on their website. Use your website as a general way to inform as many people as possible as quickly as possible regarding activities within the firm.

Are You Ready

Disasters can occur in many forms. The focus on disaster planning is a reminder that bad things happen—even to good lawyers. The key to the process is to anticipate the problems that might occur and to take reasonable steps to eliminate those potential difficulties or reduce their impacts. Advance planning is critical. Remember, however, that creativity and flexibility are also needed—every firm disaster is unique in many ways.

Creativity and flexibility can only go so far. Those who have "straw or stick" systems must often rely on the charity and protection of others who had the foresight to build with bricks. Create your own solid disaster plans for all types of disasters—and be willing to help your fellow attorneys who have less secure systems. In these types of situations, it is truly much better to be able to give help than be required to receive it. ■

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Endnotes

1. Wikipedia, "Hurricane Katrina," November 21, 2006.
2. Wikipedia, "Hurricane Floyd," November 21, 2006.
3. Patricia Yevics, "Disaster Planning: Protecting Your Firm, Your Clients, and Your Family," 2001; Law Office Management, Maryland State Bar Association, Inc.
4. "Small Firm Crisis Manual," *Law Technology News;* September, 2005; page 44.
5. "Data Decay," *ABA Journal;* August, 2006; page 63.
6. "Spike in Laptop Thefts Stirs Jitters Over Data," *The Washington Post;* June 22, 2006; page B-1.
7. "Death by Laptop," *Law Technology News;* May, 2006; pages 31 and 58.
8. "Small Firm Crisis Manual."
9. "When a Lawyers Dies," ABA Network, e-News for Members; March 2006.
10. "Disaster Planning," Lawyers' Professional Indemnity Company, Toronto, Canada; 2004 page 8.
11. "Make Papers Safe from Storm," *The News and Observer* (newsobserver.com); June 25, 2006.
12. "Disaster Planning," page 17.
13. "Disaster Planning," pages 26 and 27.

Five Ways to Find Your Purpose after Fifty

By David Corbett

Most people can now expect to live longer. Those extra years are a great gift. But they can be an albatross if you don't know what to do with them. A minority of people like to stay the course, whatever it is. But most people find they need to dig down to their core selves and find new goals and purposes that touch something deep inside—the kind of goals that get them out of bed in the morning.

But how does one find a new mission at age 50 or 60 or 80? A growing array of books, courses, programs, and now websites exist to provide suggestions, and many of them offer valuable detailed guidance, worksheets, and resources. Working your way through them all can be a chore. But identifying your new purpose doesn't have to be so major an undertaking that you never do it. There are core ideas and principles you can use to find your purpose after 50. Here are five tools.

1 **Get into neutral.** This is crucial when you leave a career. Resist the temptation to leap into the next phase of your life. Sit still. Take a timeout. Give yourself permission to decompress. The neutral zone is kind of a moratorium on old habits and thoughts. Experiencing such a "white space" can be scary. If we submit to it, however, new thoughts and fresh possibilities will emerge. It will help you redefine who you are now, not what you were. Neutral also helps give you closure on the end of your primary career, and the purposes and relationships it held for you.

2 **Retell your life story.** Stories reveal things your rational mind (and resumes) can miss. If writing is hard for you, imagine you're writing a letter to a friend or speak into a recording device. Recap in brief, or in outline style, the story of your life. As you organize the "facts" of your life, hundreds of images, thoughts, recollections, and memories will begin to cross your mind. Sift and distill these for central themes, interests, activities, and relationships that matter most and express who you are. Use old photos or letters. Pull out your report cards. Read what your teacher wrote about you, and not just your grades. Don't judge. Generate data. There are clues in your past.

3 **Use your verbs.** This technique works throughout the assessment process. The pressures of social status make you think about yourself in nouns—the titles, labels, roles, and affiliations, usually of your career. But nouns close doors. They peg people. Strip them away and get to your verbs. The challenge now is to dream not about what you want to be but what you want to do. Verbs are active and dynamic. What were you doing when you felt excited or fulfilled? Find several examples and then look for patterns in your skills and experience. That will help you redefine what you want to do now.

4 **Write a personal "mission statement."** Companies and organizations have these. Why not individuals? Consider writing a statement reflecting your life vision or mission. Skip tangible goals or specific projects and make a list of the values, beliefs, and interests you care about the most—the motivators that guide you, fire you up, and draw out your best contribution. Only when you have a strong interior sense of these broader life goals can you find the real-time contexts, life opportunities, and markets in which to apply them.

5 **Involve others.** A trusted circle of advisors can be of immense help as you seek new paths. Put friends, present or former work colleagues, and family members on these personal sounding boards. Those who know you well and who are stakeholders in your success can

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From Forsyth to Pender: Reflections from a Thirty-Two Year Judicial Odyssey

By Douglas Albright

When I retired from the superior court bench on December 31, 2005, it ended a public career that had lasted nearly 40 years (almost as long as Moses sojourned in the wilderness). Almost 32 of those years were as a judge of the superior court. At 29 I had been elected as solicitor (now district attorney) for the old 12th Solicitorial District, and later, at the ripe old age of 35, I was duly elected as one of the resident superior court judges for the 18th Judicial District (Guilford) to succeed the Honorable James G. Exum Jr. who had vacated his seat to run for the North Carolina Supreme Court. Eventually my public career would spread over parts of five decades and would bridge two centuries.

The people of North Carolina bestowed upon me the high honor and distinct privilege to serve as a superior court judge, an office which I firmly believe is the best judicial job our state has to offer. My respect for the superior court as an institution has only grown deeper and stronger with each succeeding term and each passing year. It is with a deep sense of humility and quiet pride that I look back over my years of service in this office. Do I second guess my decision years ago to leave the active practice of law and enter into public service first as a prosecutor, then as a judge? I can honestly say that I have only the fondest memories and absolutely no regrets over what unfolded during the intervening years.

It became my extraordinary privilege to become one of only six superior court judges in over 200 years of the history of the superior court to hold court in all 100 counties of this great state.

I held my first term of superior court in Forsyth County in January 1975. Almost 28 years later I reached the 100 county milestone when I held a criminal term of superior court in Pender County on December 16, 2002.

Chief Justice I. Beverly Lake Jr. and assistant director of the Administrative Office of the Courts, David Hoke, came all the way to Burgaw to present a commemorative plaque and certificate to mark the occasion. Chief Justice Lake made some kind and gracious remarks in my behalf. I was deeply touched by the gesture and will always be grateful to them for taking the time and trouble from busy schedules to come down and mark the moment with me. The fact that my wife and members of my family were on hand to witness the event meant more to me than I can say.

In between my first term in Forsyth and this very remarkable term in Pender I was able to have some very grand and unforgettable moments and to encounter some of the finest people one could ever hope to

imagine.

It may be quite a while before another superior court judge will be able to complete the whole 100 county circuit. He or she would have to get started at a very early career stage. North Carolina is a very long state east to west. To make the circuit requires leaving home on many a Sunday afternoon or evening in order to reach far and distant counties in time to be able to convene court on Monday morning. Motel living becomes a way of life for such an undertaking. Such long stretches away from hearth and home will become, at times, a real test of patience and endurance. It is the loneliness that accompanies being away from your spouse and children which is toughest to handle. Absence from chambers for weeks at a time plays havoc with the paperwork and other local responsibilities. In my case, I was on the bench long enough to be able to space out the extreme travel destinations and maintain reasonably close contact with my home base in Guilford County. For my part, it was worth the effort to get it done, and I am very glad that I was able to hold court in every county, even though it took me nearly 28 years to do so.

A number of other obstacles make the prospects rather dim for another superior court judge to reach the judicial milestone any time soon. For one, the legislature has split the judicial divisions in half—where there were four there are now eight. This action reduced the number of counties embraced in the regular rotation. Moreover, considerations of containing travel costs and holding down other expenses have resulted in mounting pressure not to send superior court judges too far from home. It has become a rare thing indeed in these days for a superior court judge to be sent from one end of the state to the other. Furthermore, a number of judicial districts have so few regularly scheduled terms of court that it becomes very difficult for an out of county, out of district judge to obtain a commission to hold court in such a district.

There also remain some additional, practical reasons which mitigate against a judge in this day and age getting around to all 100 counties. Younger judges with families frankly are less apt to be willing, or to have enough interest, to take on the "away from home" time required in traveling across the state. Judges who are regularly assigned to the popular coastal counties in warm weather or to the beautiful mountain counties in the fall cannot really be blamed if they are less than thrilled about swapping out such desirable venues in order to come into the urban, high case load district where the long calendars and contentious trials simply grind a judge down over time. It's a tall order to accommodate a fellow judge who needs to pick up a county west of Asheville or east of Raleigh in order to fill out the "100" list. Frankly stated, it is less than an even swap (although many of my colleagues were absolutely gracious and accommodating.

As I gradually made the circuit traveling along the highways and by ways to some county where I had never held court before, I must say I thoroughly enjoyed each new court experience and looked forward to going to every one of them. I met and worked with some of the finest public servants our state has produced. North Carolina is a wonderful state, and its people are basically good and honorable with deep purpose and an abiding sense of public responsibility. The quality of my professional life was enriched beyond measure by rubbing shoulders with many able attorneys, fine sheriffs and their deputies, outstanding clerks of court (and their hardworking deputy and assistant clerks), ever faithful official court reporters, dedicated probation/parole officers, and a host of truly professional law officers at all levels that I have encountered along the way. I would be remiss in failing to mention my esteemed colleagues on the superior court bench whose friendship and collegiality made my time so meaningful and produced so many of the grandest moments I experienced. It is these dedicated people that I will miss the most. I will remain forever grateful for having had the experience and opportunity of working with them in the pursuit of public justice and in keeping of the rule of law unsullied and unsoiled.

Having lived and worked under the "rotation principle" for superior court judges for almost 32 years, as one might expect, I have developed some rather pronounced notions about the practice, a few of which I wish to share.

Article IV, section 11, of the North Carolina Constitution mandates the rotation of superior court judges and provides in pertinent part as follows:

> The principle of rotating superior court judges is a salutary one and shall be observed.

We have observed this provision in practice and theory for over 200 years with what I believe to be good results. After all my years on the superior court bench, I come away with profound respect for the wisdom and foresight of the framers of our state constitution and a very considered judgment favoring retention of the rotation principle. I do believe, arguments of administrative inefficiency notwithstanding, that it best serves to insure a high quality of justice and minimizes opportunities for scandal and improper influence in the conduct of the court's business.

Based upon my hands-on experience in the trenches and my term on the Judicial Standards Commission, I have come to the compelling conclusion that the rotation system serves as a bulwark against "home cooking" or "cronyism" in important judicial decisions. As I see it, it is the best (albeit not perfect) system devised to curb undue influence of local lawyers on local judges, and it serves in great measure to minimize bias by local judges from spilling over into the judicial business before the court. No better way exists to keep perceptions of favoritism or improper influence away from the courthouse steps and out of the courthouse. It very much reduces the opportunities for extrajudicial influence in the form of authority, money, social position, or other subtle local pressures to tip the judicial balance scales. It also goes beyond any other conceivable measure to prevent a judge from becoming jaded after facing the same lawyers making the same arguments and using the same tactics day after day. When that "same old, same old" feeling moves in and takes over, judge "burn out" is soon to follow. Rotation serves to inject new energy and pump life into a judge who has had enough of the local scene. New judicial blood brings with it at least the perception of a judge with a clean slate and energizes the local bar, while it also creates a fresh feeling around the courthouse.

It also seems to me that the local lawyers, for some reason I don't fully understand, show a bit more respect to an out of town judge and accept more gracefully the rulings made. They are less prone to trade on friendship or exert other leverage to take advantage of a visiting judge. I also believe they are less apt to take adverse rulings as a personal affront when handed down by a

visiting judge.

Plainly stated, it is simply not healthy for the justice system when a judge is at home too long or too often. Perceptions of bias and/or favoritism inevitably creep into the courthouse culture even when reality is otherwise. Perception of bias is just as corrosive as actual bias is to the justice system. Inevitably, personal animus between a judge and a lawyer may flare up which, in addition to having a adverse effect on judicial decision making, leads also to unnecessary hostility and ill will. The resulting tension is outright harmful to the bench/bar relationship. As I see it, the best way to minimize all these hurtful aspects is to keep the judges moving in and out of the district. It insures a better quality of "arms length" justice.

One does not hold court in every courthouse in the state and come away without developing some observations, perceptions, and recollections about them. The age of the grand old courthouses, stately and awe-inspiring as temples where justice dwells, has given way to a more modern era characterized by a concept of efficient, low frills, bottom line conscious courthouse construction which unfortunately has led all too often to courthouses which lack the ageless grandeur and quiet dignity of their earlier counterparts. Concerns of security and economy have changed altogether the notion of what a courthouse or courtroom ought to look like. Convenience of access and/or cost of land have led to many new courthouses being moved away from the town center. At the risk of being labeled unduly nostalgic, I do confess a deep preference for that earlier era.

I do not mean to imply, however, that every courthouse project results in "motel modern baroque" design or ambience. Frankly there are some very nice, impressive new courthouses. Some of the newer courthouses, such as those in Currituck, Wilkes, Surry, Ashe, Randolph, and Harnett, are really first class insofar as function and interior design go, and it is a pleasure to hold court in them. The new addition in Union ought to be added to this group (to mention just a few but with no slight intended to other equally worthy of mention structures). Buncombe County may well have done the best courtroom renovation of any. The main courtroom has been quite richly restored and is one of the finest courtrooms anywhere. You know you are in a courtroom when you enter.

I fondly recall the old courthouse in Jackson County set high upon the hill where justice ought to dwell. The grand courthouse in Northhampton County, even if on flatter land, is so beautifully maintained and awe inspiring in appearance that it just stands out and dominates its surroundings. What courthouse can top the historical importance of the old courthouse in Caswell County with the judge's bench so high in the courtroom that one felt he was looking just a few feet below Almighty God when the judge entered? It's original wide plank floors still remain an amazing feature to me. The courthouse drips with history and political intrigue form the Civil War era. Senator "Chicken" Stevens was murdered in the courthouse basement during reconstruction days.

Probably my favorite view is from the courtroom in the old courthouse in Chowan County. When the main doors open the view from the bench is straight out into

Albemarle Sound. It is just as spectacular today as it was during the reign of the Lord's Proprietors. It is easy to understand why this particular spot was chosen for the courthouse.

An unusual recollection comes to mind from the old courthouse in Stokes County. In the upper balcony the windows had pull down shades. When the afternoon sun shown through the windows, the pull cord hanging down was silhouetted in such a way as to cast a noticeable shadow across the courtroom floor which eventually reached the foot of the bench as the sun dropped. It gave every appearance of a rope with a noose at the end. It was, to say the least, a most unwelcome backdrop for a murder trial in progress.

The old Surry County Courthouse affords a particularly special memory for me. It was here in January 1979 that Chief Justice Susie Sharp and retired Chief Justice William Bobbitt traveled up from Raleigh for the swearing-in ceremonies for Franklin Freeman Jr., the new district attorney. Outgoing District Attorney Allan D. Ivie Jr., a nineteenth century figure, resplendent in his bat-wing collar and tails, gave forth with the forensic oratory of an earlier, by-gone era. Seemingly he made one speech, took a deep breath, and then made another. It was long but eloquent. Justice Bobbitt and Sharp made appropriate remarks. After the speech making was over and the oath administered, they joined me on the bench as court convened in regular session. It was a tight fit on a narrow bench. Was I ever edgy! For a young judge, this high ceremonial occasion was quite an undertaking. I was surrounded by two of the finest chief justices who ever served, and I didn't dare mess up. My palms were very sweaty. Things worked out, and it was overall a splendid occasion. I cannot remember another time when two chief justices joined the presiding judge and actually sat on the bench with him during court.

A very special "perk" for judges who ride the circuit is the opportunity to sample the local cuisine. While judges have a limited budget for expenses which doesn't permit them to eat of the fatted calf or sip the nectar of the gods, they do have a way of sniffing out the finest barbeque in eastern North Carolina. With due deference to the plethora of great burger joints situated strategically all over the place, eastern barbeque houses are king of the hill. How do you top Wilber's in Wayne County? Go to Wilson County, I suppose. But there are some great ones in Johnston County as well as a host of other places. When you get down to it, the woods of eastern North Carolina are just thick with really good barbeque emporiums. In reality the fact of the matter is that virtually every county has some special, hidden jewel of an eating establishment that puts out outstanding country cooking and is known to the bailiffs, court personnel, and highway patrol. They will readily lead the judge to the Promised Land. Most likely the local attorneys are already there. Most judges, if not restrained, will soon eat themselves into a food coma.

I can recall some really legendary feasts in Rowan County at Wink's. When the courthouse gang showed up the food came out. Fresh flounder and juicy ribs were brought in by the plateful, piled high. It was delicious. The mother of all buffets, however, has to be at Shatley Springs in Ashe County where the tables are never empty and the food rolls on like an ever rolling stream. It takes about two hours to do this thing right. So plenty of time has to be allowed to leave the courthouse in Jefferson, eat, and get back. Mountain vegetables and a variety of meats will put judges down for the count by afternoon recess. Don't let me overlook the famous pork chop sandwich served up at Snappy Lunch in Mt. Airy (only 7-8 miles from the courthouse in Dobson). Snappy Lunch was made legendary by the Andy Griffith show and is still going strong. Favorable mention needs to be given to those out of the world banana fritters at Cobb's Corner Restaurant in Williamston. Judge William Griffin, my dear friend, put me on to these. There is nothing like them. I could go on. I haven't even touched the great places just about anywhere in the 30th District, but I think you get my drift. No judge will ever starve while out on the circuit.

A visiting judge can generally count on being taken under the wing of the great courthouse cooks worry that he is underfed and undernourished. Someone is always baking a cake or fixing a delicious casserole or some other tasty dish. It would be so rude for a judge to turn down a food offering from his court reporter or courtroom clerk. No judge wants to hurt the proud cook's feelings. If you don't believe this to be the case, then come with me to Surry County and see for yourself. It is no accident that I always gained a lot of weigh when I went to Dobson. There's just no way to pass up such courtesy.

By far the best dessert could at one time be found in Forsyth County, at the jail of all places. It seems that during World War II one of the cooks on the USS Missouri was renowned for his secret recipe for buttermilk pie. President Truman happened to be on board one time, the story goes, and sampled a serving of this famous pie. He liked it so much that he talked the cook into coming to the White House especially to make that pie for the president. After his retirement, that cook eventually turned up in Winston-Salem and came to the attention of head jailer, Harvey Wood, who talked him into doing some cooking at the jail. Of course his buttermilk specialty was served on special occasions. Those occasions occurred when the judge, the district attorney, the high sheriff, defense attorneys, and other selected courthouse dignitaries were invited over to the jail for lunch in order to inspect the quality of the jail food. To make a long story short, I was able, on more than one occasion, to sample the buttermilk pie Harry Truman discovered and made famous.

Judges are also frequently invited to attend civil functions where great food is served. I recall holding my first term of court in Allegheny County where I was extended an invitation to come to a special occasion in the evening. It seems that this was an annual affair, and all the courthouse dignitaries were in attendance. Some of the local ladies were cooking. There were many skillets and much smoke. You could smell and hear the meat cooking. The cooks were laughing and having the best time while the grease sizzled and popped. Out of curiosity, I inquired of one of the deputies nearby what was being cooked and served. He answered something to the effect that this was the annual "mountain oyster" roast. It began to dawn on me that I was in over my head here and was really backed into a corner. Rather than hurt anyone's feeling when mountain oysters were offered to me, I simply picked out the smallest one and quickly swallowed it whole.

Speaking of jail food again, no meals served in any local jail could top that offered by Sheriff E. Ponder in Madison County. Once he sized up a visiting judge (did he

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"I see tangible evidence demonstrated all too frequently that there is an insidious, perceptible decline in respectful professionalism (noticed by just about every objective observer of the scene). Professional civility, common courtesy, polite cordiality, and mutual respect between lawyers too often gives way to open rancor, bitter acrimony, adversarial hostility, and abrasive gamesmanship."

have sense enough to know water ran downhill) and if he approved the way he was holding court and the judgments that he was entering (was he listening to Sheriff Ponder's recommendation regarding punishment, was the case coming out the way the local folks thought it ought to?), on Wednesday he would invite him to the sheriff's table back in the jail. Now this was a high honor. It was his way of saying that you were doing all right. Mrs. Ponder was doing the jail cooking and she was outstanding. It was mountain style cooking at its best, especially when fresh mountain vegetables were in season.

In addition to holding court in the fine courthouses about the state, I have also held court in some of the darnedest places. In Carteret County during courthouse renovations, court was held in a nearby old warehouse which had been fitted out for the occasion. The acoustics weren't great and the amenities were sparse, but we did OK. Similarly in Rutherford County, during courthouse renovations, court was held in an empty factory building. It was fixed up as best as can be done, although things were scattered a bit. Again we made it through and hopefully justice was done.

The most unusual out-of-courthouse session I recall was in Montgomery County, where court sessions were held during the reworking of the courthouse in Troy. We went over to the Torch Restaurant. The bench was set up on the bandstand. The jury deliberated in the kitchen. Serving tables were moved around to create tables for counsel, and chairs were set up for lawyers and witnesses. At the end of the session after all the business of the court was conducted, we were served an outstanding steak lunch right where we had finished holding court. There we were (judge, district attorney, defense counsel, probation officers, court reporters, sheriff and deputies, courtroom clerks). We had a great meal and enjoyed much fellowship even after all the contending and contesting during the week. The fellowship characterized the way everyone seemed to be able to get along in those days even though they were at times on opposite sides of hotly contested issues and represented competing interests. All that is gone out the window now. Things like that rarely, if ever, happen any more. Things are so acrimonious and adversarial these days.

The world of practicing law has turned over many times since I took my first oath of professional office in the grand courtroom of the old Guilford County Courthouse. The face of the bar has changed drastically. The nature of litigation, especially civil, is all but unrecognizable when compared to that of an earlier, more civil time. Everyday practice of law hardly resembles what I recall it was when I was a young lawyer. The world of technology has transformed virtually every area of practice. Computers, fax machines, and e-mail have speeded up the delivery of documents and information and have intensified the discovery wars beyond all comprehension. Cell phones provide instant communication without regard to location. Yet, I wonder, are we better off today because of this technology? Probably so in some respects, but the potential for wearing out an opponent by a sudden deluge of paper is very high.

I am sad to say, however, that some very observable negative developments have crept into the practice. I see tangible evidence demonstrated all too frequently that there is an insidious, perceptible decline in respectful professionalism (noticed by just about every objective observer of the scene). Professional civility, common courtesy, polite cordiality, and mutual respect between lawyers too often gives way to open rancor, bitter acrimony, adversarial hostility, and abrasive gamesmanship. Lawyer relations at times become contentions and sometimes just plain rude. The old days when most, if not all, problems in litigation could be cleared up by a single five minute telephone call are long gone, to put it mildly. Harsh allegations and abusive epithets can fly about with reckless abandon. There is a rush to take technical advantage of one's opponent and openly question his or her ethics. Suspicion of motives hovers over the length and breadth of professional actions. Have I overstated the case? Would that it were so. This sort of thing just poisons the well and makes trying cases too unpleasant to bear. I for one have become sick of it. Relations between lawyers shouldn't be like that.

Depositions on occasion degenerate into open warfare. Why should a lawyer knowingly schedule a deposition so that it conflicts with the opposing lawyer's stated vacation plans? Why would a lawyer purposely fail to inform opposing counsel that a case high on the calendar will be dismissed on Monday at calendar call and leave the opponent to work all weekend to get ready for a trial counsel knows will not take place? Why would a lawyer casually, purposely, or habitually ignore discovery deadlines, thereby forcing totally unnecessary hearings on sanction motions? What would possess a lawyer to hurl a profanity-laced tirade at opposing counsel during a deposition and to belittle and insult opposing counsel in front of his client? Sadly, I have dealt with each one of these spiteful, unprofessional behaviors. They have no place in the practice. Once upon a time these behaviors simply didn't exist. Such create a corrosive influence on the profession and are detrimental beyond measure to the reputation of lawyers in the eyes of the public. Some lawyers have lost any sense of professional good manners. I am proud of, and openly support, the efforts by the bar to self correct these gross abuses. I further wish to praise the great work and efforts of the Chief Justice's Commission on Professionalism and its director, Mel Wright, to meet this problem head-on and to undertake initiatives to reverse this pervasive and unaccept-

able misbehavior. The problem is severe but not mainstream. There is much hope on the horizon.

Probably no area of practice has become more unrecognizable to an oldster in courthouse circles than the nature of trial lawyers themselves. The sense of the actor on stage that characterized the great courtroom lawyers of yesteryear has vanished and is no more. Where have all the trial lawyers gone? The giants seem to no longer exit, save for a precious few. Trial lawyers of the classical mold as we fondly remember them are a dying breed, soon to be extinct. In their place have come the "litigators." They are bright and very able. They are adept at motion making, untiring in the taking of depositions, and relentless in the delivery of pounds of paper in discovery. They believe earnestly in summary judgment as the ultimate desired end of a lawsuit. Yet, somewhere along the way, such bedrock, necessary skills as crisp direct examination, penetrating and aggressive cross examination, eye contact with the witness at all times during questioning, effective presentation of important exhibits (not treating a crucial document as one would a piece of scrap paper). Too often it appears counsel totally forgets that the jury is looking on, taking it all in. Great forensic oratory in jury argument is as rare as an ivory billed woodpecker. What in the world has happened? When did the "technocrats" get loose in the courtroom? How do we account for this sea of change in the nature of trial lawyers? I have seen too many "A" students in law school who ought not come within a hundred yards of a jury of 12 ordinary citizens. Brilliance unconnected can be a liability.

Perhaps the era of technology has increasingly transformed trial lawyers into "technocrats," skilled but low key, bland and essentially colorless. They are about as exciting to watch as a dead mackerel on the beach. No one puts a jury to sleep quicker. Perhaps there is a glaring lack of mentoring in the art of skillful, effective trial advocacy. The gradual disappearance of trial lawyers cut from the old cloth, lawyers who tried a lot of cases and were battle hardened veterans of countless contested cases which went to verdict, has reduced the role models for young, aspiring trial lawyers. Flare in style has given way to monotone delivery of written-out questions from a legal pad. Perhaps the press of billable hours keeps young lawyers from hanging around the courthouse like they use to do—you could pick up a lot that way. Perhaps the decline in the number of cases actually going to verdict (less than 10% of civil cases) has simply squeezed or dried up the opportunities for a young lawyer to take the case all the way and develop from the experience. Only actual experience in trial can forge the capability of a lawyer to take the heat of a hotly contested case, to keep the jury's attention as the trial develops, and to build a host of other necessary skills that only going the distance can nurture. You learn to try cases by doing them. I am convinced that the declining number of trials has had a debilitating effect on the development of the next generation of true trial lawyers. The result has been too many cases where defeat was snatched from the jaws of victory simply from lack of experience. I have seen too many good cases messed up, or settled too cheaply because a lawyer simply lacked what was necessary to bring the verdict home. You don't believe me? Stick your head in a courtroom. Listen and observe. It is often a sobering experience.

While trying a case with able lawyers who are fully prepared and know what they are doing is a genuine delight to any trial judge, and while conversely, struggling along with lawyers who are ill prepared and lacking in the necessary skills and/or experience to be effective in a hotly contested case is enough to try the patience of Job, a trial judge comes to learn how important it is not to discourage or disparage a lawyer who is absolutely doing the best he or she can. Not every one who goes to court can be a Clarence Darrow. In the end, it is the cause that is paramount, not the lawyers.

What should be remembered is that you are the lawyers. You directly safeguard all we love and cherish as American citizens. You bring the law alive. You are the guardians of the rights and privileges our Constitution guarantees us as a free people.

Into your hands is committed the keeping of the rule of law beyond political upheaval, safe and secure above partisan clamor, as supreme in our way of life and our country. It falls upon your shoulders to keep burning the beacon lights of freedom.

See to it that those same sacred rights to which you yourselves were born are transmitted down entire—undiluted, untarnished, and undiminished—to those who come behind. The rights and liberties of generations yet to be born are in your hands to preserve. This is a sacred calling. It calls for the highest order of your devotion. Drain deep the chalice of courage as you rise to this great challenge.

My dear lawyer friends, the practice of law is a wonderful calling. There is a magnificence, a certain nobility, in what you do.

As for me, my professional way of life is finished. It is done. Although the final curtain has come down on my public career, I want you to know and be assured that whenever a lawyer rises to speak for the accused, wherever there is a cause well founded and well pleaded, wherever there is a cry for justice, wherever the meek seek to be heard in the face of the mighty, wherever one earnestly seeks a verdict that speaks the truth, wherever one seeks redress of just grievances, there my heart will always be. Let justice be done though the heavens fall.

Thanks for the memories. ■

Douglas Albright is a former senior resident superior court judge from the 18th judicial district.

Paying Tribute to Those Who Raised the Bar

BY CATHARINE BIGGS ARROWOOD

As I pondered the best use of this space, it occurred to me that we do not often talk enough about the individual lawyers who, on a daily basis, exemplify the nobility of our profession when it is practiced as it should be—with compassion, courage, and integrity.

So I begin this year with a profile of the sort of lawyer who defends the rule of law under the shadow of those who launch accusations of disloyalty because of the people he or she defends. These lawyers, who do their job in the midst of unpopular issues, set the bar for all of us through their everyday work which reflects their respect for the judicial system and the rule of law. I hope that this profile will inspire you and make you think of others who should be similarly profiled.

Kenneth Royall raised the bar for us all 65 years ago when, as Colonel Royall of the US Army, he was assigned to represent seven of eight suspected Nazi saboteurs who put ashore on Long Island and Florida with plans to disrupt America's war effort and spread terror and confusion throughout the land.

Historical accounts suggest that the plot was probably less fearsome than the American public was led to believe in June 1942. The suspects were civilians, not military personnel. And in fact, the plot unraveled before any sabotage occurred because one of the would-be saboteurs, claiming anti-Nazi sympathies, went to Washington and betrayed the group to the FBI. Various accounts of the incident refer to the plotters as "hapless saboteurs" and even "Keystone Kommandos."

But it was wartime—just seven months after Pearl Harbor—and President Franklin D. Roosevelt responded to the public clamor for rough justice by issuing a Proclamation and Order denying the defendants access to the civil courts and ordering that they be tried by a military commission in secret. The government made it clear that it would seek the death penalty against the suspects, hapless though they might be, for violating the laws of war by crossing military lines in civilian dress to commit hostile acts. Many Americans would have been more than happy at the time to dispense with the trial altogether and go straight to the executions of the accused.

Royall, already a prominent trial attorney in North Carolina by the time the US entered the war, initially sought to have the defense duties transferred to civilian lawyers to avoid perceived conflicts of interest. But once that idea was rejected, Royall threw himself into vigorously defending his clients and did not hesitate to buck the orders of his commander-in-chief. Royall and his co-

counsel, Colonel Dassius Dowell, instituted *habeas corpus* proceedings to test the constitutionality of Roosevelt's order, despite the president's clear disapproval.

Royall attempted to stop the proceedings of the military commission before they could begin, arguing that the tribunal lacked jurisdiction. But his argument was rejected, and the trial commenced in July 1942. Undeterred, Royall persuaded the Supreme Court to convene a special session in late July to consider the habeas petitions even while the military trial continued. At the special session, Royall argued that military courts could not be used unless martial law had been imposed or the civil courts shut down. During two days of argument, Royall often cited *Ex parte Milligan*, a Civil War era case, which stood for the principle that "the Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances."

The Supreme Court ultimately rejected Royall's arguments, the military commission completed the trial, and the commission's secret recommendation was sent to Roosevelt. One week later, on August 8, 1942, the government announced that six of the eight saboteurs had been executed. Two were spared for cooperating with the government and were imprisoned until the end of the war, then deported to Germany.

Royall not only lost the legal battle, but in the process earned the disdain of many of his countrymen for taking up such an unpopular cause. As one North Carolinian wrote, "I would suggest you remain in Washington when the war is over."

But at least one member of the Supreme Court took the time to support Royall. In a letter to Royall, Justice Jackson lauded Royall's "impressive demonstration that the right to counsel in our democracy is neither a fiction nor a formality." The highest praise came from his clients, who, while facing execution, wrote a letter stating that they had received a fair trial and that defense counsel "has represented our case as American officers unbiased, better than we could expect and probably risking the indignation of public opinion."

Royall's actions resonate today because we are once again faced with similar issues as people are excluded from the protections of the Geneva Conventions upon being given the label "enemy combatants." Lawyers across the nation, including lawyers practicing in North Carolina, have volunteered to provide a defense to these people. And, in a case with striking similarities to that of the Nazi saboteurs, one of those lawyers, Navy Lieutenant Commander Charles Swift, fought successfully for the right of a terrorism suspect to challenge—in court—the legality of his detention at Guantanamo rather than face a military tribunal with no right of *habeas corpus*. Like Royall's clients, Salim Ahmed Hamdan had not been shown to have actually committed any acts of terrorism—he was a former driver for Osama bin Laden, but was fleeing Afghanistan when he was captured.

Last June, Swift's argument that the current administration overstepped its constitutional bounds by setting up military tribunals without congressional authorization found favor with a 5-3 majority of the Supreme Court which declared the military tribunals illegal. Like Royall, Swift vigorously represented his client and questioned the legal authority of his president to circumvent the constitutionally required protections of the civil courts. Like Royall, Swift defied marching orders, which have been described elsewhere as to represent Hamdan "for the purposes of obtaining a guilty plea."

Unlike Royall, however, Swift's aggressive defense of a suspected enemy combatant, it has been reported, cost him a promotion and ultimately his career in the navy's "up-or-out" system. Royall, on the other hand, went on to be promoted to brigadier general and later served as undersecretary of war, secretary of war, and finally the first secretary of the army. He followed his public service with a successful career in private practice, and died in 1971 at the age of 77.

Swift told a reporter for a Seattle newspaper that the rule of law, not smart bombs, will make our country safe from terrorism. His comment echoes the sentiment expressed by Royall in his argument before the Supreme Court, recently noted in a column by Jack Betts of *The Charlotte Observer*: "It is trite but still true to say that the soundness of any system of government proves itself in the hard cases where there is an element of public clamor. Such circumstances test the real ability of a government and its judicial system to protect the rights of an unpopular minority."

Two of Royall's law partners, William R. Glendon and Richard N. Winfield, wrote in a 2002 magazine article that Royall "set a fine example of an American lawyer doing his job. He gave our tradition of the right to counsel new meaning, depth, and reality."

One final note: In all of the news stories about Swift and *Hamdan v. Rumsfeld*, one little detail is missing. Like Royall, Swift too is a North Carolina native, hailing from Franklin.

Regardless of personal political views, we should praise those members of our profession who act to help the most unpopular of the accused, because through their acts and words, they make real the principles to which we all give lip service. Makes you proud to be a lawyer, doesn't it? ■

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Find Your Purpose (cont.)

hold up mirrors to reflect back things about you that you can't see yourself. Such groups know collectively of more possibilities than any one person could summon. It can be a formal or highly informal group. To get a sense of how a personal board can help, gather three to four friends for personal brainstorming sessions. Open the floor to insights and possibilities with no judgments allowed. The goal is simply to turn up opportunities and use the feedback to improve your exploration of new directions in your life.

These steps are only a beginning. But they may put you on a path to a post-career life purpose that can dramatically reduce the chance of being bored in retirement. ■

David Corbett is the founder of New Directions, Inc., in Boston, and author of Portfolio Life: the New Path to Work, Purpose, and Passion After 50, *published by Jossey Bass. Visit him online at www.portfoliolifebook.com and www. newdirections.com.*

Fugitive Conscience

By Mark P. Foster

Kevin Brady hated to lose, whether it was checkers, ping pong, or arm wrestling. He was naturally competitive, much to the irritation of his little brother during their childhood. Now, as a middle-aged, married father, he was no different. He didn't even let his kids beat him at board games.

That is what drew Brady to criminal trial work. It was high stakes virtual combat-winner-take-all. He was a warrior in the arena, battling his opponent one-on-one. However, that is also why being a criminal defense attorney was so frustrating to him. Criminal defense attorneys usually lose. The presumption of innocence applied only on TV shows. But Kevin Brady never gave up. He believed the system was fair and that justice usually prevailed. He won more than his share of trials, but not enough to satisfy him.

Brady also carried a good deal of Catholic guilt with him. He was raised in a small town in upstate New York where he had been taught by strict nuns who trained him to feel guilt for his sins. Meanwhile, Brady's father imbued him with a fierce sense of individual responsibility. Dr. Brady had been the only general practice physician in their town. Dr. Brady cared for his patients as though they were his children—they were his responsibility. Whenever one of his patients was disabled by a disease, or God forbid, died, Dr. Brady would be devastated for weeks, torturing himself by second-guessing his medical decisions that led to his patient's fate. His son Kevin witnessed this and inherited this abiding personal responsibility for the lives of others.

Thus, whenever criminal defense attorney Kevin Brady pled a client guilty to a serious crime, he would experience periods of anxiety where he would question whether he had done the right thing for the client or had merely "sold him out." Whenever he contested a case before a jury, he carried tremendous stress in feeling that he was truly the only thing separating his client from a lengthy prison sentence or worse.

A former second-string running back at Boston College, Kevin Brady ended up in Charlotte, North Carolina, after graduating from law school at UNC-Chapel Hill. His wife was a financial analyst for one of the mega-banks headquartered in Charlotte. Their two sons were in elementary school. They lived in a small but quaint house on a quiet, tree-shaded street in the quaint Dilworth neighborhood of Charlotte. Brady practiced criminal defense as a solo practitioner in a one-room office he rented in an old Victorian house three blocks from home.

On this particular Thursday evening in June, Brady was at Connolly's Pub on Fifth Street "uptown." He was seriously contemplating getting drunk. He had just lost an ugly and emotional rape trial. After the jury had announced its verdict, the trial judge had quickly sentenced the defendant to 25 years. Just as quickly, Brady headed to Connolly's. His two drinking companions this particular evening were Nick Taylor, a private investigator, and Rod Gorman, a fellow criminal defense attorney.

Taylor and Gorman tried to console Brady by complimenting his trial work in this case. However, Brady wasn't letting himself off the hook so easy. He kicked himself for not going after the alleged victim harder during cross-examination and for leaving key points out of his closing argument. The case had been one in which Brady had recommended that his client take the plea offer, but the client was convinced that God would save him from conviction. Despite the fact that the client had rejected Brady's advice, Brady put forth maximum effort at trial. Nevertheless, Brady felt responsible for the man's plight. Even as he sat at the bar drinking beer, he kept replaying his closing argument.

After they finished three rounds of beer, the three friends went their separate ways. As Brady got into his old black Volvo sedan, he realized he was getting a headache. He wished the next day was a weekend so he could relax and decompress from this trial, but he knew he had an evidence suppression hearing the next morning. Thus, he had no time to lick his wounds and recover from this big loss. He realized he was not well prepared for the next day's hearing, but was in no mood to go back to the office and work on it. Instead, he would rise the next morning and get into the office an hour earlier than normal to prepare for the hearing.

At home, his wife Karen gave him a look of anticipation as he walked into the kitchen, where she was just making dinner for their two sons, Sean, age 9, and Michael, age 7.

"Well?" Karen said.

Kevin just shook his head slowly back and forth. They embraced and kissed briefly.

"Sorry. . . . How did your client take it?" They spoke in low tones so that the boys would not hear this adult discussion.

Brady let out a heavy sigh, and then said, "He seemed less surprised at the verdict than

The Results Are In!

In 2006 the Publications Committee of the State Bar sponsored its Fourth Annual Fiction Writing Competition. Eight submissions were received and judged by a panel of five committee members. A submission that earned second prize is published in this edition of the *Journal*. The first place story will appear in the next edition of the *Journal*.

I was. But the 25-year sentence definitely got his attention—although I had warned him he could get that much if we lost the trial."

"So, how are you taking it?"

"I don't know. . . . I'm just . . . tired. I feel like I'm just a piece of meat going through the grinder. There's no end in sight."

Karen came over and started rubbing his shoulders. "Why don't you take some time off? We could both take a week off and get away. Mom and Dad could stay with the boys."

Kevin sat down on a kitchen chair as his wife massaged his tight shoulder and neck muscles. "That sounds great right now. Unfortunately, I'm starting the Culbert trial the week after next. I'm going to be cramming all next week for that trial and then the trial itself should take at least a week. Maybe we could go after that."

Karen expected that sort of answer, as her husband rarely allowed himself to take more than a few days off at a time. But lately he seemed to be working more and enjoying it less. She was worried that he was approaching burn-out. "Honey, don't you think you need a break? Can't you get the Culbert trial continued?"

Kevin laughed. "This is a Judge Strombeck case. No continuances for the defense allowed."

"Well," Karen said, "you need to take some time off after that trial is over. I'm worried about you. Will you promise me that you'll do that?"

"Okay, you're right."

"Good. Let's have dinner. Do you want to go get the boys? They're in the backyard."

Brady headed out to the backyard and saw his two sons taking turns zooming between two trees on the "zip-line" that he had recently installed back there. They were having a ball.

"Hi, boys!"

"Dad!", they both boomed out at the same time. They both came running up to him and hugged him and started talking to him at the same time, each one telling his father of the events at school that day. "How come you're home so early, Dad?" asked Sean.

Kevin looked at his watch and then said, "Well, it's already 7:00. That's not early."

Michael shouted, "But it's not dark out yet. You don't get home 'til after dark, Dad."

"Sure I do. Now let's go have some dinner. Go wash your hands and then help me set the table."

* * *

That night, Kevin Brady, although exhausted, couldn't sleep. He kept seeing his client, in ankle shackles and handcuffs, being led away to serve 25 years in prison. He felt as if he himself had committed a crime in allowing this result to occur. He got out of bed, took a sleeping pill, and read a magazine for a while before feeling drowsy and going back to bed.

As he started to drift off to sleep, the upcoming Shawn Culbert trial entered his mind. Brady had been appointed by the court to represent Shawn Culbert, a 24 year old black man. He was single and had no criminal record. He had a steady job as a warehouse manager for a trucking company. However, Culbert and several codefendants were charged in federal court with conspiracy to distribute over 50 grams of crack cocaine and using firearms in drug trafficking crimes, thereby causing the death of a victim during those crimes. If convicted of the latter, Culbert faced life imprisonment without parole under federal law. Even if convicted only of the first offense, conspiracy to distribute over 50 grams of crack, Culbert faced a mandatory ten year prison sentence despite having no criminal record.

This was a "historical conspiracy" case, meaning that the government's evidence was almost entirely the testimony of convicted drug dealers and robbers who would claim that Brady's client had sold drugs with them and been part of the group that committed home invasion drug robberies where one of the victims had been shot and killed. The police reports and other discovery claimed that Culbert and his codefendants peddled cocaine for a five-year period of time and that they had conducted several armed home invasions of other drug dealers during which they not only stole their drugs and money, but also coldly executed one of them with a shot to the head. There were many issues to think about.

Brady sat up in bed. He couldn't sleep now, sleeping pill or not. It was 2:40 a.m. He got up, got dressed, and went into the kitchen. He made himself a cup of hot chocolate. He pulled out a legal pad and sat down at the kitchen table. He wrote "Culbert—Things to Do" across the top of the page. Then, for the next half hour, he made a list of crucial trial preparation tasks he needed to perform in the next ten days to be ready for trial. When he felt that he had listed every necessary task, he finally started relaxing a little bit and felt that he could go back to bed. He turned out the lights and headed back to the bedroom. He got into bed, looked at the digital clock that told him there were just over two hours until his alarm went off, and closed his eyes.

* * *

A week later, Kevin Brady felt ready. He had completed every task on his "Things to Do" list. It was a Friday with no court appearances. His only appointment was with Shawn Culbert. It was unusual that a client charged in such a serious case was out on pretrial release rather than being in jail. But, as Brady had to admit, he had done a good job of convincing the federal magistrate that Culbert should be released pending trial based on his lack of criminal record, his positive employment history, and the lack of strong evidence against him on this case.

Culbert came in and sat down opposite Brady in his office.

"Well, Shawn, we're as ready for trial as we can be. How do you feel?" Brady asked.

"Scared, Mr. Brady. I mean, I don't know, my mom and I been talkin', you know, and, well, is it too late to take a plea?"

"Shawn, we've been through this before. The best plea offer the government ever made was ten years and that would require you to testify against the codefendants at trial. Based on what you've told me all along, your testimony wouldn't help the government because you say you weren't involved. Why are you bringing this up now?"

"Mr. Brady, I can't do no life term. I'll say what the government wants me to say."

Brady shook his head slowly side to side. "You can't do that, not as long as I'm your attorney. You can't testify falsely against other people just to get your own sentence reduced."

"I'd tell the truth, Mr. Brady! My mom just wants me to put this case behind me and move on with my life. I'd be out in eight-and-a-half years with good time."

Brady got very worked up. He started biting his lower lip, a nervous habit of his. "Shawn, you have told me all along that you are innocent."

"I am!" said Shawn Culbert.

"Then you can't do this deal. Look, the government has a questionable case against you. It's all snitches. Every last one of them

has something to gain by testifying against you. The government has no credible witnesses against you and no physical evidence putting you at the scene of any of the home invasion robberies, including the one where the victim was killed. Why are you suddenly doubting your decision? Is it your mom? She's not the one who has to do the time, Shawn."

"What chance does a black man have against the US government? I can't beat them!" Shawn exclaimed, throwing up his hands.

"Yes you can. I can. *We can*," Brady said.

"Can you guarantee it?"

"No, Shawn, you know that. But if I were you, I would fight this. Ten years is a long time in prison for something you didn't do."

Culbert slumped down into his chair, putting his face in his hands. Brady thought he was crying, but he wasn't sure. Three minutes of silence passed before Culbert looked up again. He looked like a doomed man, resigned to his fate.

"All right, Mr. Brady, let's go to trial."

"Are you sure?"

Culbert let out a long sigh and gave Brady a long, steady stare. "I'm going to follow your advice. Yes, I'm sure."

"You do understand it's your decision, not mine?"

"Yes, Mr. Brady."

"Okay," said Brady. "I think you're making the right decision. I'll see you Monday morning in the courthouse to begin jury selection."

* * *

Two weeks later, Brady was spent. The trial had taken twice as long as expected. The government had called 12 cooperating drug dealers and robbers to testify that Culbert and his codefendants had sold drugs in a certain neighborhood of Charlotte for over five years and had committed several armed home invasion robberies. Brady, and the attorneys representing the two codefendants who were tried with Culbert, had done a professional job of impeaching each of the 12 witnesses with prior inconsistent statements and thoroughly establishing their incentive to provide testimony helpful to the government. The defense had emphasized that there were no neutral civilian or law enforcement eyewitnesses to any of the charged conduct. Most importantly, the defense had clearly established that there was no physical evidence putting any of the three defendants at the scene of the fatal home invasion robbery.

Brady felt exhausted but satisfied by his thorough closing argument. For once, he felt that he had not left out any important points. He really believed he had crafted a closing argument that accounted for all the evidence against his client and provided a more compelling explanation than that submitted by the government. The jury seemed to be with him during his argument. He had good eye contact with most of the jurors and there were a few jurors who nodded in agreement with his points throughout his argument.

Brady was sitting on the bench behind the counsel table and chairs, doing a crossword puzzle. His client and his client's family were out in the hallway, sitting on a bench, hand in hand, saying prayers that God would show the jury the truth. The two codefendants were not in the courtroom, as they were in custody. Their lawyers were milling around the courtroom, talking with courtroom staff. The jury had been deliberating for over four hours and it was just a few minutes before 5:00 p.m.

The quietness of the courtroom was broken by a loud knocking. Brady sat upright. The courtroom staff and lawyers exchanged glances. One of the marshals came into the courtroom moments later and announced that the jury had a verdict. Brady got up and went out into the hallway. He went over to his client and his family and told them there was a verdict. They all gasped and looked at each other. Culbert's mother started crying. Culbert hugged her and told her it would be all right.

Once everyone was assembled in their places in the courtroom, Judge Stromberg instructed the marshal to bring the jurors in.

The jurors filed in with inscrutable expressions. Brady felt his heart beating in his throat. The verdicts would be read in order corresponding to the order of the charges in the indictment. Count One was the charge alleging the use of a firearm in a drug trafficking crime which caused a death. This charge carried a sentence of life imprisonment without parole. Because Culbert was listed as the first defendant of the three, his verdict would be announced first.

Judge Stromberg addressed the jurors: "Ladies and gentlemen, have you reached unanimous verdicts as to each charge?"

"Yes we have, your honor," said a bank executive who was the jury foreman.

"Please hand the verdict forms to the marshal," ordered the judge. "Madame Clerk, please take the verdicts."

"We, the jury in the above-entitled case, as to Count One, do find Defendant Shawn Culbert guilty as charged . . ." Culbert put his head down on the table and started moaning. His family a few rows back could be heard sobbing and saying "No, no, no." Brady looked straight up at the ceiling and prayed that this was not really happening. He wanted to die. He wanted to disappear.

As the jury continued to read the rest of the verdicts, Brady sat frozen. He couldn't move. He finally turned his head to look at the jury. There was little indication of what the jury was thinking or how they felt about their verdicts. The prosecutor, however, was beaming. As she always did, she harbored no doubts about the guilt of whoever she was prosecuting. To her, criminal prosecution was a matter of black and white, truth and lies, cops and bad guys. There were no gray areas, no shades of truth. Hers was the only truth.

When the jury finished reading the verdicts, Culbert sat up and turned to look at Brady. The look he gave Brady was one Brady had never seen before. It was at once the face of a condemned man and of a bitter man. It was the coldest look Brady had ever received.

* * *

Two months later, it was time for Culbert's sentencing hearing. In an unusual decision, Judge Stromberg had allowed Culbert to stay out on pretrial release after the verdict was entered. Although the federal sentencing guidelines called for a life sentence for Culbert because of the death of a victim, Judge Stromberg had turned down the government's request to revoke bond. Brady thought Stromberg had done this just to spite the prosecutor, whom he was believed to despise.

Brady had filed a lengthy sentencing brief, giving the judge a multitude of legal and factual reasons why he should not impose a life sentence in this case. The government had naturally responded with its own brief, citing case law in support of its position that the life sentence called for by the guidelines was presumptively reasonable and appropriate and should therefore be imposed. Brady did not have a good feel for which way Stromberg was going to go, but he knew that the lowest sentence he could hope for under the circumstances was about 20 years, double what Culbert would have received if he had accept-

ed the government's plea agreement.

Despite the fact that Brady had explained to his client his hope for a reasonable sentence, Culbert was dejected. He dwelled on the trial itself and how Brady had advised him to pass up the plea offer. At their last meeting before the sentencing hearing, Culbert actually accused Brady of forcing him to go to trial so he could earn a larger fee. The attorney-client relationship was no longer characterized by trust. Culbert had convinced himself that the jury's verdict was Brady's fault. Inside, Brady did not feel much differently.

Nevertheless, Brady had rounded up a large cast of character witnesses to speak on Culbert's behalf at the sentencing hearing. He was going to try to create an emotional groundswell that might cause the judge to sentence Culbert to a term of imprisonment far less than what he otherwise would do.

* * *

It was a hot, steamy Monday afternoon in August. Culbert's sentencing hearing was scheduled for 3:00 p.m. Brady had arranged to meet Culbert at 2:00 p.m. in the courthouse to make final preparations for the hearing and for Brady to meet all of Culbert's family members who wanted to speak on his behalf.

Brady was delayed in state court and arrived in the federal courthouse at 2:15 p.m. He found a large group of nicely dressed African-American people at one end of the courthouse lobby. As he got closer, he confirmed that it was indeed Culbert's extended family members, including his mother.

"Where's Shawn?" Brady asked.

"He went back out to the car to get the statement he is going to read to the judge," said his mother.

"Okay. Well, I need to meet each of you who I haven't met before and get your names and relationship to Shawn. Then, I want to briefly talk to each of you who want to address the court on Shawn's behalf."

Brady spent the next 15 minutes accomplishing this task. It was now 2:30 p.m. and Shawn had not returned yet. Brady knew that Judge Stromberg wanted attorneys and their clients in the courtroom 15 minutes before the scheduled sentencing time so that they were ready to go in the event that the case in front of them finished earlier than expected or was continued.

Brady asked Shawn's mother what was taking him so long. "I don't know—he should have been back by now. The car's only a block away."

Brady looked at his watch. "Well, could somebody go check on him and get him in here real fast? We're running out of time."

Culbert's brother Jermaine volunteered to go get Shawn. He walked quickly out the courthouse door.

Jermaine returned ten minutes later. He was perplexed. "I didn't see him. He wasn't at the car. I could see his statement sitting on the front seat. He was nowhere in sight."

Brady was overcome by a sense of dread. Any chance he had of getting the judge to give Culbert a lenient sentence was quickly dissipating. Judge Stromberg would not be in a forgiving mood when sentencing a defendant who was late for his sentencing hearing.

However, Culbert was not just late. He never came back to the courthouse. Judge Stromberg waited until 4:00 p.m., and then issued a warrant for Culbert's arrest.

Brady walked out of the cool subdued light of the courthouse into the bright heat of a hot August afternoon. As he walked to his car, he saw Culbert's family gathered around Shawn's car, talking and gesturing quietly, still in disbelief over what had happened that day. As Brady walked the two remaining blocks to his car, he could not help but wonder where Shawn Culbert had gone and what he was doing. He wondered how long it would be before federal marshals arrested him.

* * *

A week had gone by since Shawn Culbert had failed to appear for his sentencing hearing. Brady had not heard from Culbert or any of his family members. Brady had tried to convince himself that the jury was to blame, not him, and that Culbert had chosen to worsen his situation by going on the run. But Brady was hard to convince. He kept thinking about the trial and what he could have done differently to better illustrate to the jury why the government snitches should not be believed. He kept seeing Shawn's face during their last meeting when Shawn openly blamed Brady for the trial result.

Brady and his wife had not been able to get their schedules straight so as to allow a vacation. Now even Brady was recognizing that he was burned out. He was not taking pleasure in anything these days, not even his kids. He had the unshakeable feeling that he had betrayed his client by persuading him to try a case risking life imprisonment rather than take a reasonable ten-year offer.

He was not able to concentrate on his other cases at all right now as he was obsessed with Shawn Culbert's case. In fact, on this day, a muggy Monday afternoon with thunderstorms threatening, Brady found himself daydreaming about how he could have cross-examined each of the 12 snitches differently. He was in his ground-floor office in the old Victorian home, sitting at his desk, which faced a large mirror on the opposite wall. Brady's back was to the window, which looked out onto the sidewalk and a park across the street.

Gradually, Brady had the feeling he was being watched. He slowly withdrew from his daydream. He became aware of an image in the mirror. It appeared to be a dark figure standing amongst the trees across the street. The figure was not moving and appeared to be looking right into Brady's office. Oh my God, thought Brady, is that Shawn Culbert? As soon as Brady turned his head to look out the window, the figure receded back into the treeline and disappeared.

Brady suddenly felt exposed and vulnerable. Was that Culbert? What does he want? Why isn't he a thousand miles away by now? Brady stood up and pulled the blinds closed. He told his secretary he was leaving for the day. He felt very self-conscious walking to his car. Was Culbert watching him?

Brady arrived home, wondering whether he should tell his wife what he had seen. But he started doubting himself. That could not have been Culbert. The federal marshals were sure that he had left Charlotte. Culbert wouldn't be stupid enough to come near his attorney's office when the federal marshals were looking for him, would he? It was probably just someone who resembled Culbert, Brady told himself. Maybe he had been pushing himself too hard. He needed to take it easier. He decided not to bother Karen with this, now that he realized he was probably just seeing things.

* * *

Four days later, it was a Friday morning without any court appearances for Brady, so he decided to catch up on his sleep. Getting out of bed at 7:30 and feeling refreshed, he had a leisurely breakfast for a change and stayed around long enough to walk his sons

out to wait for the bus, something he rarely did. After the big yellow bus whisked his boys away, Brady went back into the house and kissed his wife good-bye. Since he had no plans to leave the office today, Brady wouldn't need his car. Therefore, he decided to walk the three blocks to his office. It was a warm, breezy day. He enjoyed taking his time for once. He realized how rarely he ever took the time to look at the houses in his neighborhood. He saw gardens and home additions that he had never noticed before.

Brady slowly became conscious of the sound of a car creeping along behind him. He turned casually and looked over his shoulder as he kept walking, but looked quickly back to the front. In the quick glimpse that he had, he saw an old, brown Oldsmobile station wagon moving slowly along the street behind him. The car had a single occupant, a young black male in the driver's seat. Chills went down Brady's spine. He stopped this time and fully turned back to look at the car. The driver was Shawn Culbert. The Oldsmobile quickly turned left up a side street and vanished. Brady tried to see the license plate number, but there was no license plate. Instead, there was a sign taped to the back window that said "License tag stolen-new one applied for."

Brady had broken out in a cold sweat. He ran to the office, bounding up the steps to the old Victorian two at a time. He was going to call 911 and summon the police. Then he thought, what am I going to tell them? That my fugitive client is driving around in an old car without a license tag? They were already looking for him due to the arrest warrant. He hadn't been attacked or threatened by Culbert, so what additional crime could he report? And then he wondered about the ethical issues in reporting one's own client to the police. But he quickly decided that the exception for an attorney's knowledge of present or future crimes being committed by his client would allow him to report to police that he had seen his fugitive client.

However, as time passed, Brady again started doubting what he had seen. Why would Culbert be shadowing him? Logically, one would expect Culbert to try to get as far away from Charlotte as possible, not to linger around town where people might recognize him.

Brady caught his breath and went into his office, sitting down behind his desk. He wondered about his sanity. Was he hallucinating? Were his feelings of guilt causing him to imagine that he was seeing the unfortunate client for whose fate he felt responsible?

He didn't know the answers and he didn't want to follow this line of inquiry any further in his mind. He took several deep breaths and tried to settle down and work on the myriad of matters on his daily "Things to Do" list.

* * *

One week later, Kevin Brady had convinced himself that he had been mistaken in his Shawn Culbert sightings. Culbert had to be many miles away with federal marshals hot on his trail.

It was a Saturday afternoon. Brady was out on the deck in his backyard, grilling steaks for Karen and him. The boys were spending the night at their grandparents' house. Karen was sitting in a glider swing on the deck, sipping a gin and tonic. It was a nice, mild, early fall afternoon. Brady could see his next-door neighbor out grilling on his deck. There was no next-door neighbor on the other side of Brady's house, as his was the end house on the block. Kevin had planted a row of bushes to create a fence-like hedge separating his yard from the street.

Kevin turned the steaks and then sat down next to Karen. He picked up his gin and tonic and motioned to Karen for a toast. They clinked glasses and Kevin said "Here's to a nice romantic evening, just the two of us."

"Amen to that," she said.

They swung for a while in the glider swing and just enjoyed the peace and quiet that only parents of young children can truly appreciate. Just then, Kevin Brady saw a face through the hedge. It was Shawn Culbert, and he was pointing one hand at Brady as if it was a pistol—he even made a shooting motion with his hand. This time, the face lingered long enough for Brady to be sure that it was Culbert. He jumped to his feet and ran towards the hedge.

"Kevin, what are you doing?" shouted Karen.

But Kevin was already through the hedge and out into the street, wildly looking around for Shawn Culbert. He was nowhere to be seen. Karen ran around the end of the hedge and found Kevin standing in the street, looking crazed.

Karen came up to Kevin and grabbed his arm. She said "Kevin, what's going on? Are you all right?"

"That man watching us—that was Shawn Culbert!"

"What man? What are you talking about?"

"The guy who was standing in our hedge looking right at us. You saw him."

Karen shook her head slightly. "I didn't see anyone."

Kevin looked at her in disbelief. "Are you kidding me? He was right there. His face was right between two of the bushes. He was watching us. I made eye contact with him."

Karen was getting frightened. "Kevin, I didn't see anyone and I was looking right at the hedge just before you got up and ran off."

"Well, he was there!" Kevin Brady was getting defensive even as he doubted his sanity. Brady took his cell phone out of its holster and dialed 911. After a few rings, the emergency operator answered and Brady reported that fugitive Shawn Culbert, who was the subject of a federal arrest warrant, had just trespassed at Brady's house and threatened to shoot him.

The police arrived five minutes later. They examined the hedge and found no signs that a prowler had been there. They interviewed Karen and some of the neighbors. Neither Karen nor any of the neighbors had seen anyone. The police became more suspicious that Brady was up to something, especially since he was a criminal defense attorney. The police not so subtly communicated their doubt that Kevin Brady had seen what he claimed to have seen.

Kevin and Karen ate their steaks with little conversation. An awkward silence hung in the air. Both wondered the same thing: Is Kevin losing his mind? As they finished dinner, Kevin was the first to address the subject head on.

"Well, I think I should get some professional help, Karen."

Karen nodded her head approvingly. "I agree, Kevin. I'm glad to hear you say that. I think this is probably caused simply by you being stressed out and fatigued. But you should see someone who can evaluate you and make sure you are okay."

The next day, Karen drove Kevin to the county Mental Health facility. He turned himself in as a self-referral. After a screening interview by a nurse, Brady was taken into a room and given paper clothes to wear. He was examined by a doctor, who also went through Kevin's medical history with him. Brady was then moved to another room. Eventually, a

staff psychiatrist entered and spent an hour interviewing Brady regarding his symptoms. He was interviewed, tested, and evaluated for three days. On day three, the same psychiatrist entered Brady's room and told him he would be discharged. The medical and psychiatric staff had concluded that Kevin Brady was sane and was not suffering from any mental disease. They concluded that Brady was suffering from post-traumatic stress disorder caused by the Shawn Culbert trial and the subsequent disappearance of Culbert. Brady was prescribed a variety of medications and then released.

Brady appreciated the psychiatric treatment and was committed to taking the medications so as not to have any more hallucinations. Karen picked him up and took him home. The boys were at their grandparents' house today. Kevin and Karen enjoyed a calm, quiet dinner where Kevin vowed to restore the proper balance between work and family in his life. They both felt that he had turned the corner on his problem and that life would return to normal.

* * *

Two weeks later, on a Friday afternoon, there was a brisk coolness in the air that signaled that fall was finally arriving. Then, rain started falling at about 4:00 p.m. Half an hour later, Brady said good-bye to the other office occupants, went out the front door of the Victorian house, and opened his umbrella. At the bottom of the steps, he looked up the street and saw what appeared to be someone bending down at the rear of his car parked on the street. Then the person stood up, glanced at Brady, ran to a brown Oldsmobile station wagon, and sped off. Brady felt a chill go down his spine as his heart started pounding. Oh no, not Shawn Culbert hallucinations again, he thought. Wait a minute, he thought to himself. Did I forget to take my medication this morning? He walked slowly through the rain towards his car. He failed to notice that his license plate was missing or that his taillights were both broken.

Brady was completely immersed in mentally evaluating the hallucination he had just experienced. He got in the car, turned the ignition, and tried to gather his composure. He finally felt in control again and pulled onto Dilworth Road to head home. After he crossed East Boulevard, he saw a police car turn in behind him. A few seconds later, the police car's light bar was activated and Brady pulled over.

After a minute or two, the police officer exited his vehicle and approached Brady's. Brady rolled down the window. Before pulling Brady over, the officer had just been forwarded an anonymous "Crime Stoppers" tip that a black Volvo with broken taillights and missing a license plate would be passing through the intersection of East Boulevard and Dilworth Road and that the car's driver was carrying two ounces of crack cocaine and a pistol. Because the officer observed obvious traffic code violations, he was legally authorized to pull the car over even though the real reason for the stop was the anonymous tip concerning two ounces of crack cocaine and the gun.

The officer came up along the driver's side of Brady's car. He asked Brady for his driver's license and vehicle registration. Brady handed the officer his driver's license and then reached across to the glove compartment to retrieve his vehicle registration. A second officer had now arrived on the scene as back-up and had positioned himself on the right side of the car. He could see the glove compartment as Brady opened it. As soon as Brady pulled open the glove compartment door, two baggies of an off-white lumpy substance came tumbling out, leaving a Beretta 9-millimeter semi-automatic pistol hanging out of the glove compartment. Brady jerked back in his seat, not believing what he was seeing. The officers both drew down on Brady and ordered him to put his hands on the steering wheel. Events slowed down and Brady felt like he was looking down on this surreal scene from above.

The officers told him that he was under arrest. They handcuffed him and put him in the back of one of the patrol cars. Brady was in danger of hyperventilating. The officers weighed the two bags of off-white lumpy substance and told Brady, "Well, Mr. Brady, you're over 50 grams of crack. The feds will take this case because you've got the gun, too. You'll get ten years for the drugs plus five for the gun. We'll see if any of your motions and loopholes will get you out of this one! See you in 15 years!"

Both officers laughed.

As the patrol vehicle pulled away to take Brady to the Mecklenburg County Jail, Brady kept trying to pinch himself awake from this nightmare. Was this really happening?

As the patrol car approached the intersection of East Boulevard and Dilworth Road, Brady suddenly noticed a brown Oldsmobile station wagon parked on the left side of the road, facing towards him. As they got closer to it, he saw Shawn Culbert behind the wheel and a banner unfurled along the side of the car. Although the rain was taking its toll on the banner, Brady could clearly see that it said, "You better hope your lawyer is better than mine was!"

Brady sat up erect and started yelling. "Hey, I've been set up! That guy in the Oldsmobile station wagon back there did it! Stop and go back! There's a banner on that car that you need to seize as evidence!"

The officers just shook their heads and exchanged glances. They took him to the jail where he was booked into custody.

* * *

As Brady lay on his wafer-thin "mattress" on the floor of his jail pod that night, he realized that Shawn Culbert had set him up perfectly. The evidence against Brady was very strong. No one would believe that the missing Shawn Culbert, widely believed by law enforcement to be outside the state, had returned to frame his former attorney. Brady felt that it was inevitable that he would be convicted and sentenced to 15 years in prison.

Brady had thought that losing the Culbert trial was the worst possible feeling he ever could have had. How wrong he was. His long nightmare was just beginning. ■

Mark Foster practices federal and state criminal defense in Charlotte as a partner in the firm of Nixon, Park, Gronquist & Foster, PLLC. He is a 1981 graduate of the UCLA School of Law and recently retired as a lieutenant colonel in the Marine Corps Reserve after 20 years of service. He is married and has four children.

IOLTA Income Trends Upward

Income and Participation

Complete information on IOLTA income earned in 2006 will not be received and recorded until January 31, 2007; however, we have already surpassed our $4 million income goal, which makes 2006 another record breaking year. We have been working to increase the numbers of attorneys participating in the program, and statewide IOLTA participation is now just under 75% of eligible North Carolina attorneys. We are also continuing to work with participating banks to improve their IOLTA policies. We now have over 75 banks (with over 5,000 IOLTA accounts) participating in the program.

Grants

Given the projected 2006 income, the trustees made grants in a record breaking amount.

For 2007, the trustees made just under $3.7 million in grants. They also deposited $150,000 into the Reserve Fund, bringing the balance to more than the $1.5 million mark it had achieved before the trustees used almost $400,000 to keep grants stable during an income downturn due to low interest rates. For 2007, they are also offering $110,000 in matching grant funds. Our grantees have made good use of such funds in their fund-raising endeavors.

NC IOLTA made a $30,000 grant to the Chief Justice's Equal Access to Justice Commission so the commission can begin work on several projects. The commission was established to create deeper support within the bar, the judiciary, and the public for a diverse legal aid community and to provide benefits in the form of leadership, planning, and financial support in a variety of arenas. It includes members from bar organizations, the judiciary, legal aid providers, the legislature, the business and philanthropic communities, legal aid clients, and law schools.

The commission is very interested in seeing the NC IOLTA Program move to comprehensive or mandatory status, i.e. all attorneys who keep general client trust accounts must participate in the program, as a way to increase funds for equal access to justice programs. As shown on the map in the last issue of the State Bar *Journal* (Winter 2006), in 32 of the 52 IOLTA jurisdictions, the program is comprehensive. States recently moving to mandatory status have shown significant income increases.

State Funding for Legal Aid

For calendar year 2006, NC IOLTA administered over $4 million in state funding for legal aid that passes through the NC State Bar.

New Participants

Your Interest Does Make A Difference!

Participation in IOLTA does not affect a lawyer's trust account practices and never affects the principal balance of the account. The participating bank calculates and remits all accumulated interest, less service charges, directly to IOLTA. Lawyers still retain complete discretion to determine whether a trust deposit is of sufficient size or duration to justify placement in a separate interest bearing account for a client.

To learn more about the IOLTA program or to become a participant, please call the IOLTA office at 919/828-0477.

Thank you to the following attorneys and firms who have joined the NC IOLTA Program since October 2006.

Adams, Raymond, Raleigh
Barritt and Blanch, PLLC, Durham
Burgwyn, Kay M., Whitakers
Carpenter & Flake, PLLC, Wadesboro
Chitwood & Fairbairn, PA, Asheville
Close, Cary E., PA, Raleigh
Connor, Dougals P., Mt. Olive
Connors, Bruce H., PLLC, Greensboro
Correll Law Firm, PLLC, Lenoir
Curry, John S., Asheville
Daniels Law Firm, PLLC, Jacksonville
Daughtry, N. Leo, Smithfield
Demidovich Law Firm, PLLC, Raleigh
Derr, Dailey J., Durham
Fadely, Lewis R., Siler City
Freeman, Katherine, PA, Charlotte

CONTINUED ON PAGE 39

The Myth of the "Nonrefundable" Lawyer Fee

By Carmen K. Hoyme

Calling a fee "nonrefundable" doesn't make it so. Whether a client is entitled to a refund of fees when the lawyer-client relationship ends depends upon whether the fee paid by the client in advance is clearly excessive under the circumstances, *not* the terminology used by the lawyer to describe the fee.

Although terminology doesn't determine "refundability," it is nonetheless useful to begin any discussion of lawyer fees by clarifying the terms. In general, fees paid by clients at the beginning of the representation fall into one of the following three categories: (1) ***Advance.*** A pre-payment of fees to be billed, usually on an hourly basis, which is essentially a security deposit belonging to the client and must therefore be deposited into the lawyer's trust account and withdrawn as it is earned; (2) ***Prepaid Flat Fee.*** A one-time payment for specified legal services to be completed within a reasonable period of time, to which the lawyer asserts immediate entitlement and which is, therefore, deposited into the general operating account; or (3) ***True Retainer.*** A payment that reserves the exclusive services of the lawyer but *is not* used to pay for the legal work done by the lawyer. A lawyer is immediately entitled to a true retainer upon payment because the reservation of the lawyer's services is the consideration for the retainer. The true retainer therefore should be deposited in the general operating account. The majority of fees paid at the inception of the lawyer-client relationship are either advances or flat fees, notwithstanding the tendency of many lawyers to refer to any initial payment as a "retainer."

These three types of up-front fees are distinct, and it is incumbent upon the lawyer to explain the nature of his or her fees to the client. Flat fees and true retainers may only be treated as earned upon receipt if the lawyer clearly explains this arrangement to the client and the client agrees.[1] Otherwise, the payment is (by default) an advance: It is presumed to be a "deposit securing the payment of a fee which is yet to be earned." (RPC 158) Fee arrangements may provide for more than one type of fee, but "[t]here should be a clear agreement between the lawyer and client as to which portion of the payment is a true general retainer, or a flat fee, and which portion of the payment is an advance. Absent such an agreement, the entire payment must be deposited into the trust account and will be considered client funds until earned." (97 FEO 4)

While it is important to differentiate these types of paid-in-advance fees so that both lawyer and client clearly understand the nature of the fee paid, it is improper for the lawyer to refer to *any fees* as "nonrefundable." "*[N]o fee is truly 'nonrefundable.*'" (2000 FEO 5) This is true because of the cardinal rule prohibiting clearly excessive lawyer fees. Rule 1.5(a). The permissive guidelines regarding lawyer fees in the ethics opinions are subordinate to the ethical prohibition on clearly excessive fees in Rule 1.5. Accordingly, in order to avoid charging a clearly excessive fee, a lawyer may ultimately have to refund all or part of *any type* of fee paid in advance. When a client-lawyer relationship ends, the lawyer must "consider all of the circumstances associated with the case in retrospect for the purpose of determining whether the fee...was reasonable. To the extent that the fee charged and collected exceeded a reasonable fee under the circumstances, a refund [is] necessary." (RPC 106)

Because "there is always a possibility that a lawyer will have to refund some or all of any type of advance fee if the lawyer-client relationship ends before the contemplated services are rendered," *it "is false and misleading in violation of Rule 7.1" to call such a payment a 'nonrefundable fee.'"* Moreover, the designation of the fee as 'nonrefundable' in the fee agreement has a chilling effect on the client's [absolute] right to terminate the representation at any time." (2000 FEO 5)

In short, within the parameters of the Rules of Professional Conduct there is no such thing as a "nonrefundable fee," so lawyers must not purport to collect one. All fees paid by a client at the outset of the representation should be clearly explained, and none should be called nonrefundable. ■

Carmen Hoyme is deputy counsel at the North Carolina State Bar.

Endnote

1. "Since it is difficult for clients to understand when a prepaid flat fee is earned upon receipt, and proof of such understanding may be required in subsequent proceedings, it is recommended that the lawyer obtain the client's consent in a written fee agreement." 2000 FEO 5. *See also* RPC 50 (noting that because a true retainer is an "unusual fee arrangement and one likely to be misunderstood, the lawyer should be careful to offer the client an adequate explanation of the agreement"); 97 FEO 4 ("Written fee agreements are not required . . . Nevertheless, a prudent lawyer will insist upon a written fee agreement . . . [which] makes certain what too often rests in uncertainty when differences occur.").

Developing a Social Portfolio

By Don Carroll

John (a composite, not a real person) was a little sheepish in showing up at my office. After all, he was no longer practicing, although he made a point of telling me that his license was still active and he was a member in good standing of the North Carolina Bar. He had, in fact, practiced actively for 40 years when he had decided that it was time to enjoy the golden years and retire at the end of last year. Since then he had felt himself to be lost and somewhat depressed. His wife had died a few years earlier from breast cancer and he was living alone. The golden years seemed tarnished.

As baby boomers hit the retirement threshold, more and more studies are looking at the phenomenon of retirement. One recent study found that the perceived quality of retirement experience was rated substantially lower than the quality of prior work experience. On a 0-10 scale with ten the highest, the retirement experience was rated 7.35 overall (7.11 for women and 7.6 for men) and the work experience prior to retirement was rated 8.05 (7.93 for women and 8.2 for men). John's experience reflects these figures.

The studies on aging and retirement have a common diagnosis of the problems faced in our understanding of retirement. First, retirement since the 1950's has been seen as an all or nothing concept. There is no reason it should be so. Nor does this reflect the desire of most older people. In one study, 52% of retirees indicated that, if offered the right job, they would go back to work.

The irony is that developmental studies of the human life show that finding meaning is now more important in the latter one third of life than in any other period. Therefore, when the psychological need for meaning is greatest, people are most likely to give up the one structure that has given them meaning, their job, and no other structures have been created or even thought about.

Lawyers are lucky in that the profession historically has allowed for the gradual slowing down of its senior lawyers. Full retirement can come in stages, though this is still very hard for the solo practitioner. The difficulty for lawyers is that our identification of ourselves as lawyers, and the carrying of this identification as a way to have meaning in our lives, is often very strong. So strong that once we stop practicing and step into retirement we can, like John, feel lost, our lives can seem bereft of meaning, and we can fall into a depression.

The other part of the problem is that most studies have found that culturally we do not value our senior generation and few societal structures have developed to allow for those in retirement to find greater meaning. This is particularly troublesome because of the data showing the beneficial impact of positive social engagement and productive activities on the health and longevity of those at and beyond retirement age.

So, on the one hand, there is a growing group of citizens who, in answering the question "What gives meaning to your life?" say almost universally, "Making a contribution toward helping others," And on the other hand, there is a lack of social linkages and structures in our society to allow this resource of knowledgeable citizens to be engaged in productive activities that help meet the needs of our society. There are growing numbers of ways that older people can become involved in volunteer and other activities that contribute to our social capital, but compared to the size of the resource older citizens offer and the needs we have, the social structures to link the two are still woefully inadequate. This suggests that one of the challenges for our organized Bars is how can our more senior lawyers continue to be of service to the profession after they retire from full time practice and/or want or need to be free of the burden of client matters and deadlines.

Here is the reality that John faces. Those

most at risk to die prematurely are older, single males. Studies show that retirees report having a limited number of new friends, and even fewer new close friends. There are often not sufficient contexts for meeting and making new friends. The linkages and social structures to provide an opportunity for John to engage in meaningful volunteer activities are limited.

The answer to the retirement issues that John is facing are complex and individual. But they can be addressed. Most importantly they are issues that should be addressed by all of us long before we start considering retirement. The concept that we are all familiar with in considering retirement is that of having a balanced financial portfolio that will support our financial needs in retirement. Retirement research now suggests that, just as important as having the means to look after ourselves physically in retirement, is having a balanced "social portfolio" based on sound activities and interpersonal relationships that we can carry into and through our later life.

The concept of a balanced social portfolio to meet our emotional and spiritual needs draws on the concept of the balanced financial portfolio. The balanced financial portfolio has three major concepts that shape how it is achieved: 1) Assets to be drawn upon with an emphasis on diversification; 2) Insurance to be used as a backup should there be a disability or a related loss; and 3) Start early and build up over time. The social portfolio is designed with the same major three concepts.

First, the social portfolio is structured so that your social assets are diversified and have potential for growth and development. Second, the insurance back-up concept is addressed by focusing on two different kinds of activities a) individual vs. group activities and b) high energy/high mobility vs. low energy/low mobility activities. (The concept here is that should loss occur in the form of a decline in physical health, not all the interests that you have developed should require high energy or high mobility; similarly, if loss of a spouse occurs, in the transition of dealing with such loss, you have interests that you can draw upon that do not require the involvement of a partner). The third concept of starting early and building over time is straightforward. For example, if you would like to retire and write, you begin to take writing courses long before retirement.

What strikes me about this model of a social portfolio is that it is something that we all need to have in our lives for good mental health, regardless of how near we are to retirement. We live rich and rewarding lives if we have amassed social capital to live on whether we are retired or not. But with the transition into retirement, having adequate social capital to live on is very, very important. The goals of the social portfolio are to enhance individual mastery and interpersonal growth, while balancing brief and enduring relationships. The social portfolio is a way of helping people develop new strengths and satisfactions while aging—even when loss occurs in that process. The challenge is straightforward for all of us—develop and invest in a balanced social portfolio. ■

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers. The Lawyer Assistance Program addresses alcoholism, other addictions, depression ,and other mental health problems. The LAP has two committees of lawyer volunteers who assist other lawyers: the PALS Committee and FRIENDS Committee. If you are a North Carolina lawyer, judge, or law student and would like more information go to www.nclap.org or call toll free: Don Carroll (for Charlotte and areas West) at 1-800-720-7257, Towanda Garner (in the Piedmont area) at 1-877-570-0991, or Ed Ward (for Raleigh and down East) at 1-877-627-3743. Don is the author of "A Lawyer's Guide to Healing" *published by Hazelden.*

GROUP/HIGH MOBILITY	INDIVIDUAL/HIGH MOBILITY
■ Participating in an athletic team for seniors (biking, jogging, walking, dancing, etc.) ■ Traveling with Elderhostel or another travel/learning group ■ Joining a local nature conservancy	■ Creating a vegetable garden or raising camillas ■ Developing descriptive walking tour of a large park or greenway ■ Doing nature photography across North Carolina
GROUP/LOW MOBILITY	**INDIVIDUAL/LOW MOBILITY**
■ Joining a potluck dinner group ■ Creating with others a church social or family newspaper ■ Hosting a book club or sports-watching club at your home	■ Writing a local bar history ■ Writing a family history ■ Creating a family e-mail newsletter

IOLTA Update (cont.)

Fryar, Kurt B., Wilmington
Gaither, William D., Cary
Griffith, Steven K., Cary
Hatley, III, Lawton H., Charlotte
Jackson, Gary W., Charlotte
Jauregui, Joe, Cornelius
Jones, Jesse C., Charlotte
Jones, Quintina Daniell, Charlotte
Linehan Law Firm, PLLC, Durham
Mayer, Nancy, Durham
McFayden Law Firm, New Bern
McKoy, Rolanda L., Durham
Mills, Allen, Raleigh
Minor, David W., Statesville
Palme', Steve, Raleigh
Pestaner, Mitzi, PLLC, Greenville
Ray, John Tyler, Flat Rock
Reid, Shannon T., Durham
Santowasso, Mary Rebecca, Raleigh
Schafer, Gerald S., Greensboro
Setzer Law Firm, PLLC, Aberdeen
Shella, Christopher B., Durham
Smith, M. Lynn, PC, Jacksonville
Smith, Troy A., PC, Hamlet
Stephens, M. H., Whiteville
Wagg, Thomas E., III, Greensboro
Widelski, Kathleen A., PC, Concord
Ziomek, Sarah Reid, PLLC, Rutherfordton ■

Bank News

New Banks We are pleased to report the following banks have started participating in the NC IOLTA program since the last publication of the Journal:

Captsone Bank, Raleigh
Bank of Oak Ridge

Adding new banks across the state offers more opportunities for attorneys and firms to participate in the IOLTA program.

A Profile in Specialization—Michael A. Colombo

An Interview with Denise Mullen, Assistant Director of Legal Specialization

Recently, I had an opportunity to talk with Mike Colombo, a board certified specialist in estate planning and probate law, about his experiences with the State Bar's specialization program. Colombo earned his undergraduate degree in nuclear engineering from NC State University in 1970, worked for a brief period on nuclear submarines in Charleston, SC, then served five years in the US Air Force. Colombo was on active duty in Southeast Asia as an F-4 fighter pilot, flying 58 missions. After returning stateside, Colombo decided to pursue a legal career, earning his law degree from the University of South Carolina in 1979. He became a board certified specialist in estate planning and probate law in 1987. He is currently a partner in the firm of Colombo, Kitchin, Dunn, Ball and Porter, which he formed in 1983 with W. Walt Kitchin Jr.

Q: Why did you pursue certification?

At the time, I had worked in estate planning and tax law for about eight years in a small firm in the small town of Greenville. I saw board certification as an opportunity to earn a recognizable credential. I wanted to demonstrate to others that I knew what I was doing in this field.

Q: How did you prepare for the examination?

Right after I graduated from law school, I began to take a lot of continuing legal education (CLE) courses in both tax and estate planning. I always had more than enough CLE for certification, even before I thought at all about it. I think that my focus on CLE in general, in addition to the advanced survey course that I completed through the North Carolina Bar Association just before the exam, really helped me to be prepared.

[The North Carolina Bar Association is currently planning to hold the estate planning review course, tentatively set for Thursday, September 27, 2007, in Greensboro. Please visit their website at www.ncbar.org for more information on this CLE program.]

Q: Was the certification process (exam, references, application) valuable to you in any way?

It was, primarily in that it forced me to increase the depth and breadth of what I knew about estate planning law. I felt good about my CLE background, but I had to stretch to learn broader areas and dig deeper into familiar issues to prepare for the exam. I have always thought that fear of failure is a strong motivator, and I do think it helped me!

Q: Has certification been helpful to your practice?

Yes, the things that I hoped would come with achieving board certification have happened. I was a young lawyer with a small firm in a small town. My certification made a statement to other lawyers, bank officers, the local community, and even the wider community of lawyers statewide and I began to see a difference in the way they related to me. I had a credential that others could see as an objective validation of my knowledge and experience.

The certification also gave me better opportunities to get to know others, and to get involved in the NCBA and other groups. I was honored to serve as the chair of the NCBA Estate Planning Section, which led more recently to becoming the NCBA President. I've had similar opportunities in my local community that have also been very rewarding.

Q: Who are your best referral sources?

I receive a good portion of referrals from satisfied clients, and also quite a few from trust officers, accountants, and other lawyers. I use my annual directory of board certified specialists to make many referrals, and I'm sure other specialists do the same.

Q: How does your certification benefit your clients?

One big benefit to the public is the increased amount of CLE courses that we take. A lawyer who has gone through the process of becoming certified, including being recommended by peers and passing an exam, has demonstrated that he or she is very knowledgeable. The stringent CLE requirements ensure that the lawyer stays at that level.

CONTINUED ON NEXT PAGE

Congratulations to North Carolina's Newest Certified Specialists

These lawyers met all of the requirements to become certified specialists by the North Carolina State Bar effective November 9, 2006.

Bankruptcy Law

Gene B. Tarr - Business

Criminal Law

Janna D. Allison - State
George B. Collins Jr. - State
J. Frank Lay - State
Albert M. Messer - State/Federal
Donna S. Terrell - State

Estate Planning & Probate Law

Alexander R. Atchison
Janice L. Davies
Arthur E. Morehead IV

Family Law

Eura A. Cherry
Kelly K. Daughtry
Carleigh H. Evans
Kathryn Frye
David E. Holm
Jill S. Jackson
Lunsford Long
Arlene M. Reardon
Linda B. Sayed
Alice C. Stubbs
Elise M. Whitley

Real Property Law

Paul A. Arena - Commercial
Kimberly R. Coward - Residential
Richard A. Galt - Commercial/Residential
James C. Huff - Residential
Bernard Richards Jr. - Commercial/Residential

Social Security Disability Law

Lynn Bishop
Laurie J. Burch
Vaughn S. Clauson
Amy L. Cox
James M. Duncan
Holly J. Fairbairn
James B. Gillespie Jr.
Diane S. Griffin
Charles T. Hall
Mason T. Hogan
Robert J. Jacobs
Robert A. Joneth
Janet M. Lyles
Deborah F. Maury
Christa A. McGill
Susan M. O'Malley
Virginia A. Noble
James W. Partin
Walter B. Patterson
Brian L. Peterson
George C. Piemonte
Rachel Pickard
Michele C. Pritchard
Brian M. Ricci
Kevin D. Rodgers
H. Russell Vick

Workers' Compensation Law

Susan H. Briggs
Gina E. Cammarano
Lauren M. Citrano
Matthew D. Harbin
John M. MacKay
G. Lee Martin
Edwin A. Pressly
David A. Turman

Profile in Specialization (cont.)

Q: Are there any hot topics in your specialty area right now?

The main issue in estate planning and related tax law these days is a global one, the scheduled repeal of the death tax and the reinstatement of carry over income tax basis in 2010, followed by repeal of the repeal in 2011. More change is likely, but no matter what happens, this is a big deal for lawyers doing this type of work and their clients. We've had many proposals in Congress to deal with this, but no decisions as of yet.

Q: How do you stay current in your field?

Mainly through CLE courses and reading. I generally take tax or estate planning courses through the NCBA. I also attend courses by others such as the Southern Federal Tax Institute and American College of Trusts and Estate Counsel.

Q: Is certification important in your practice area? How?

I think it's particularly important in estate planning. Many lawyers can easily draft a basic will, but complicated situations require much more detailed documents and planning. In my experience, the majority of disputes occur because documents were not well drafted.

Q: Is certification important in your region?

Eastern North Carolina has a relatively low density of lawyers certified in my practice area. I hope to see more from our area getting involved in the program.

Q: How does specialization benefit the public? The profession?

Board certification provides an opportunity for the public to learn who specializes in a particular practice area. It also gives lawyers, even younger lawyers, the chance to make a statement. You put in a lot of hard work and a lot of time learning a practice area in depth, and this is a good way to let others recognize those efforts.

Q: Is there a recent case you've had where your specialization came in handy?

Recently I was able to help a corporate trustee, with multiple trusts for one family with over 60 beneficiaries in some of the trusts, to use the new Uniform Trust Code to modify, merge, and terminate the various trusts, providing substantial benefits to the family. It's rewarding to be able to use specialized knowledge to provide that kind of help.

Q: How do you see the future of specialization?

I hope that the program continues to prosper. I wouldn't mind seeing a specialty in tax law. I think it's important for clients to know that a potential lawyer has taken these steps and accomplished this goal.

Q: What would you say to encourage other lawyers to pursue certification?

This is a very positive program. The exam is doable, and certification is a great opportunity to increase the level of your practice, while providing valuable information to the public. ■

L. Diane Johnson

In the wake of the North Carolina Art Museum's exceptionally popular "Monet in Normandy" exhibition, it is particularly appropriate that the paintings of Diane Johnson will be showcased in the windows of the State Bar this quarter. Johnson started as a classic portraitist but, for the last 20 years, she has concentrated her efforts on landscape painting in acrylic, pastel, and oil. Her particular passion is painting "en plein air"—painting in outdoor daylight as Claude Monet first began to do in Normandy in the 1860's. *See* www.ncartmuseum.org/monet/about. Johnson has even instructed several plein air excursions to Monet's garden in the village of Giverny, France. Johnson said of the experience, "I can understand why Monet painted in this single place for the last 40 years of his life and still could not exhaust its enduring beauty."

Johnson's passion and philosophy of painting is described in the following artist statement:

> For many years I enjoyed painting client portraits, still life, and landscapes from my studio. However, the incredible experience of capturing landscapes en plein air [is], bar none, the best way to engage and interpret the subject—live, on location....The landscape comes alive, as I paint the light that redefines whatever scene is before me.....I have chosen to step back from the tight realism I once embraced, for a more open, painterly/impressionistic treatment—capturing the landscape in a more lively way [and] a sense of place rather than a literal copy best left to photography.

A North Carolina resident, Johnson's work appears internationally in numerous corporate and private collections. She was selected in 1988 as one of the top 100 emerging artists in the United States by *American Artist* magazine, selected as a finalist in *The Artist's Magazine's* 1988 national still-life competition, and rated as one of the top ten "best buys" for investment art by *The Roanoker* magazine in 1990. In 2000, Johnson was invited to participate in the first *White House Conference on Culture and Diplomacy.* She has authored numerous instructional articles for artists and collectors and, in 2003, she co-authored *Promotion for Pennies,* a book dedicated to artists. Johnson describes being the founding editor and designer of *Plein Air Magazine* (now *Fine Art Connoisseur*) in 2004 as her "most rewarding challenge." ■

Each quarter, the works of a different contemporary North Carolina artist are displayed in the storefront windows of State Bar building. The artworks enhance the exterior of our building and provide visual interest to pedestrians passing by on Fayetteville Street. The State Bar is grateful to The Collectors Gallery (successor to the Raleigh Contemporary Gallery), the artists' representative, for arranging this loan program. The Collectors Gallery is a full service gallery that represents national, regional, and North Carolina artists, and provides residential and commercial consulting. Readers who want to know more about an artist may contact Rory Parnell or Megg Rader at TCG, 323 Blake Street, Raleigh, NC 27601 (919.828.6500).

Lawyers Receive Professional Discipline

Disbarments

Robert Shawn Wellons of Raleigh was disbarred by consent order entered by Wake County Superior Court Judge Narley L. Cashwell. Wellons withheld relevant items from documents produced to the US Attorney pursuant to a Grand Jury subpoena and lied about it when confronted.

The Disciplinary Hearing Commission disbarred Smithfield lawyer **James B. Ethridge**, a former district court judge. The DHC found that Ethridge engaged in dishonest conduct in handling the property of a 69-year-old woman who sought his assistance to safeguard the property.

Milton E. Moore of Williamston was disbarred by the Disciplinary Hearing Commission. Moore entered a plea of guilty to failure to file income taxes in federal court. The DHC found that Moore also engaged in conduct designed to avoid payment of taxes on a substantial amount of income.

D. Scott Turner of Mooresville surrendered his license to the State Bar Council. Turner misappropriated more than $23,000 in entrusted client funds.

John Lee of Charlotte surrendered his license to the State Bar Council. Lee misappropriated more than $1.1 million in entrusted funds.

The Disciplinary Hearing Commission announced its decision to disbar Windsor and Durham lawyer **Teresa L. Smallwood** for misappropriating entrusted funds. The DHC has not yet entered its order.

The Disciplinary Hearing Commission announced its decision to disbar Charlotte lawyer **Lawrence U. Davidson** for engaging in conduct involving fraud, dishonesty, deceit, or misrepresentation. The DHC has not yet entered its order.

Suspensions & Stayed Suspensions

Regina A. Moore of Williamston was suspended for three years. Moore was immediately eligible to apply for a stay of the suspension. Moore pled guilty in federal court to failing to file income tax returns.

Censures

Robert D. Craig of Graham was censured by the Grievance Committee. Craig undertook to represent a person on charges which had been brought against the person because of information Craig provided to law enforcement authorities.

Durham attorney **Janet W. Brown** was censured by the Grievance Committee. Brown represented buyers/borrowers in three real estate closings that were referred to her by a mortgage broker with whom she had an ongoing attorney-client relationship. The lenders were all entities controlled by the mortgage broker and were either the sellers in the transactions or recent prior owners of the properties. When title searches revealed facts that could indicate the transactions were fraudulent, Brown sought clarification from the mortgage broker rather than from the borrowers. The Grievance Committee found that Brown lacked the competence to recognize that the transactions were fraudulent.

Reprimands

R. Michael Bruce of Danbury was reprimanded for neglecting a client's case and failing to perfect the client's appeal.

Benita W. Gibbs of Cary was reprimanded for failing to follow proper trust account procedures, failing to maintain proper trust account records, and failing to respond to inquiries from the State Bar.

Perry Mastromichalis of Raleigh was reprimanded for failing to provide a full and fair response to an inquiry from the State Bar.

Theophilus O. Stokes of Greensboro was reprimanded for failing to participate in the State Bar's mandatory fee dispute resolution program and for providing a late response to the State Bar's Letter of Notice.

Paul M. Sylvia of Wilmington was reprimanded for failing to communicate with a client and a lender, failing to act with diligence in connection with two real estate closings, failing to maintain all required records of trust account transactions, and failing to respond to communications from the State Bar.

Theaoseus T. Clayton Sr. of Warrenton was reprimanded for assisting a disbarred lawyer, his son, to engage in the unauthorized practice of law by allowing the disbarred lawyer to work in his law office without supervision and without making it clear to clients that the lawyer was disbarred and could not, therefore, provide legal services to the clients.

Christopher D. Mauriello of Cornelius was reprimanded for facilitating the unauthorized practice of law by a corporation by providing legal services in connection with real estate closings that were "closed" by the corporation.

John C. Frue of Asheville was reprimanded for relying upon and failing properly to supervise a non-lawyer assistant, which resulted in failure to pay title insurance premiums in approximately 200 closings, failure timely to send payoffs of existing mortgages, failure properly to reconcile his trust account, and impermissible commingling of trust and non trust funds.

Thomas E. Brock of Winston-Salem was reprimanded for undertaking a limited representation of buyers who purchase real property from his seller client and attempting to charge the buyers a "cancellation fee" of $200 if the buyers choose to retain their own counsel for the closing.

Petitions for Reinstatement

The Disciplinary Hearing Commission denied former Greensboro lawyer **Robert Winfrey's** petition for reinstatement of his law license. Winfrey was disbarred by the DHC in 1999 for misappropriating client funds. ■

Amendments Approved by the Supreme Court

At a conference on November 16, 2006, the North Carolina Supreme Court approved the following amendments to the rules of the North Carolina State Bar:

Amendments to the Rule on Standing Committees of the Council

27 N.C.A.C. 1A, Section .0700, Standing Committees of the Council

The amendment creates a new standing committee, known as the Finance and Audit Committee, to be appointed by the president and report to the Executive Committee on a quarterly basis.

Amendments to the Discipline and Disability Rules

27 N.C.A.C. 1B, Section .0100, Discipline and Disability of Attorneys

Amendments to the rule governing the issuance of a subpoena for cause audit identify certain circumstances that are believed to constitute reasonable cause to support the issuance of such subpoenas.

Amendments to the Rules Governing the Lawyer Assistance Program

27 N.C.A.C. 1D, Section .0600, Rules Governing the Lawyer Assistance Program

The amendments provide for the appointment of the dean of a North Carolina law school as an ex officio member of the LAP Board and delete Rule .0614 which authorized the board to file a grievance under certain circumstances.

Amendments to Procedures for the Administrative Committee

27 N.C.A.C. 1D, Section .0900, Procedures for Administrative Committee

To preserve the 30-day grace period within which a member may pay dues without detrimental effect after being served with a suspension order for failure to pay, the amendments make a suspension order effective 30 days after proof of service on the member.

Amendments to Rules Governing the Administration of the CLE Program

27 N.C.A.C. 1D, Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

Amendments to Rule .1605 of the rules governing the CLE Program grant CLE credit for teaching the following: continuing paralegal education courses; law courses at new North Carolina law schools that are seeking ABA accreditation; and courses at an ABA approved paralegal school or program. The amendments also increase the number of CLE credits awarded for teaching at an ABA accredited law school, and use the same formula to calculate the CLE credit awarded for teaching at a new law school or at a paralegal school.

Amendments to The Plan of Legal Specialization

27 N.C.A.C. 1D, Section .1700, The Plan of Legal Specialization, Section .1800, Hearing and Appeal Rules of the Board of Legal Specialization, Section .2200, Certification Standards for the Bankruptcy Law Specialty

The amendments allow the Board of Legal Specialization to enter into confederations with ABA-accredited national certifying organizations in regard to the administration of written examinations in specialty practice areas controlled by federal law.

Amendments to The Rules of Professional Conduct

27 N.C.A.C. 2, Rules of Professional Conduct

Rule 0.1, Preamble: A Lawyer's Professional Responsibilities

Rule 1.17, Sale of a Law Practice

Rule 3.4, Fairness to Opposing Party and Counsel

Rule 3.8, Special Responsibilities of a Prosecutor

Rule 5.5, Unauthorized Practice of Law

Rule 7.3, Direct Contact with Potential Clients

The amendments are briefly described in the following paragraph:

A new paragraph in the preamble elaborates upon a lawyer's professional responsibilities toward other lawyers. The amendments to Rule 1.17, *Sale of a Law Practice*, permit a sole practitioner to sell his or her practice and open a new practice provided the new law office is at least 100 miles away from the purchased practice. The Rule 1.17 amendments also allow the seller to work for the purchaser or provide pro bono representation to indigents and family members. The amendments to Rule 3.4 prohibit a lawyer from failing to disclose

The Process

Proposed amendments to the Rules of the North Carolina State Bar are published for comment in the *Journal*. They are considered for adoption by the council at the succeeding quarterly meeting. If adopted, they are submitted to the North Carolina Supreme Court for approval. Amendments become effective upon approval by the court. **Unless otherwise noted, proposed additions to rules are printed in bold and underlined, deletions are interlined.**

Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send a written response to L. Thomas Lunsford II, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

evidence or information that the lawyer knew, or should have known, was subject to disclosure. The amendments to Rule 3.8 require a prosecutor to make "reasonably diligent inquiry" prior to making timely disclosure of all evidence or information that must be disclosed pursuant to law. Amendments to Rule 5.5, *Unauthorized Practice of Law*, permit an applicant for admission to the North Carolina State Bar by comity to engage in practice under certain conditions. The amendments to Rule 7.3, *Direct Contact with Potential Clients*, clarify how the advertising disclosure must appear on targeted direct mail letters.

Amendments Pending Approval of the Supreme Court

At meetings on October 20, 2006, and January 19, 2007, the council of the North Carolina State Bar voted to adopt the following amendments for transmission to the North Carolina Supreme Court for approval.

Amendments to the Rules Governing the Client Assistance Program and the Fee Dispute Resolution Program

27 N.C.A.C. 1A, Section .0700, Standing Committees of the Council

27 N.C.A.C. 1D, Section .0700, Procedures for Fee Dispute Resolution

The amendment to the rule on standing committees of the State Bar Council changes the name of the Client Assistance Committee to the "Attorney/Client Assistance Committee." Amendments to the standing committees rule and to the rules on the procedures for fee dispute resolution also change the name of the program administered by the committee to the "Attorney/Client Assistance Program." Amendments to the rules governing the fee dispute resolution program reflect more accurately the purpose of the program and the role of the fee dispute coordinator.

Amendments to the Rules Governing the Administration of IOLTA

27 N.C.A.C. 1D, Section .1300, Rules Governing the Administration of the Plan for Interest on Lawyers' Trust Accounts

27 N.C.A.C. 2, Rules of Professional Conduct

Rule 1.15-4, Interest on Lawyers' Trust Accounts

In October 2004, the State Bar Council asked the IOLTA Board of Trustees to administer the state funding for legal aid programs that passes through the North Carolina State Bar. The rule amendments clarify that the Board of Trustees has the authority to administer these funds. The amendment to Rule 1.15-4 provides that information in the program's possession relating to the bank accounts of participating lawyers will be regarded as "confidential information" not generally available to persons or entities outside of the program. However, the amendments also explain that such information may be made available to agents of the State Bar's disciplinary program upon written request and to other persons pursuant to court order or other legal process.

Amendments to the Rules Governing the Administration of the CLE Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program

27 N.C.A.C. 1D, Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

The amendments clarify the accreditation standards for programs relating to law practice management, skills training, and technology training. The amendments also eliminate references to the board's administration of the "law practice assistance program" which is no longer in existence.

Amendments to the Plan for Certification of Paralegals

27 N.C.A.C. 1G, Section .0100, Certification of Paralegals

Amendments to the Plan for Certification of Paralegals address three oversights in the original plan. Amendments to Rule .0105 create a nominating process to focus the voting of certified paralegals on the nominees whose names are sent to the council for appointment to a paralegal vacancy on the board. Amendments to Rule .0119 provide that the eighteen credit hours required in the educational standard for certification must be obtained in a structured certificate program at a school that has been designated by the board as a qualified paralegal studies program. Amendments to Rule .0122 create procedures for an applicant to request reconsideration of an unfavorable decision of the board.

Proposed Amendments

At its meeting on January 19, 2007, the council voted to publish the following proposed rule amendments for comment from the members of the bar.

Proposed Amendments to Codify the Rulemaking Procedures of the State Bar

27 N.C.A.C. 1A, Section .1400, Rulemaking Procedures

Although the State Bar Council consistently follows a specific procedure for adopting and amending the rules of the State Bar, the procedure itself has never been codified in the official rules of the State Bar. The following proposed new section of the State Bar rules sets forth the procedure.

27 N.C.A.C. 1A Section .1400 Rulemaking Procedures

[Entire section is new and, therefore, does not appear in bold print.]

.1401 Publication for Comment

(a) As a condition precedent to adoption, a proposed rule or amendment to a rule must be published for comment as provided

CONTINUED ON PAGE 52

Committee Considers Firm Agreements Addressing the Financial Effect of a Lawyer's Departure

Council Actions

At a meeting on January 19, 2007, the State Bar Council adopted the opinions summarized below upon the recommendation of the Ethics Committee:

2006 Formal Ethics Opinion 15
Dormancy Fee on Unclaimed Funds

Opinion rules that a lawyer may charge a reasonable dormancy fee against unclaimed funds if the client agrees in advance and the fee meets other statutory requirements.

2006 Formal Ethics Opinion 16
Distribution of Disputed Legal Fees

Opinion rules that under certain circumstances, a lawyer may consider a dispute with a client over legal fees resolved and transfer funds from the trust account to his operating account to pay those fees.

2006 Formal Ethics Opinion 17
Autodialed Recorded Message to Potential Clients

Editor's Note: G.S. §75-104 may redner this opinion moot.

Opinion rules that a lawyer may advertise by autodialing potential clients and playing a recorded telephone message with information about a legal issue or the lawyer's legal services provided the message does not include a mechanism to connect the recipient directly to the lawyer or an agent of the lawyer.

2006 Formal Ethics Opinion 18
Surrender of Deposition Transcript

Opinion rules that, when representation is terminated by a client, a lawyer who advances the cost of a deposition and transcript may not condition release of the transcript to the client upon reimbursement of the cost.

2006 Formal Ethics Opinion 19
Communication by Guardian ad Litem with Represented Person

Opinion rules that the prohibition against communications with represented person does not apply to a lawyer acting solely as a guardian ad litem.

Ethics Committee Actions

At its meeting on January 18, 2007, the Ethics Committee agreed that Proposed 2006 FEO 3, *Representation in Purchase of Foreclosed Property,* and Proposed 2006 FEO 20, *Use of Departed Lawyer's Surname in Firm Name,* should continue to be studied by subcommittees. The committee also agreed that Proposed 2006 FEO 14, *Payment of Fee for Consultation,* should be revised and published for comment, and that six proposed opinions should be published for comment. The proposed opinions appear below. The comments of readers are welcomed.

Proposed 2006 Formal Ethics Opinion 14 (Revised)
Payment of Fee for Consultation
January 18, 2007

Proposed opinion rules that when a lawyer charges a fee for a consultation, and the lawyer accepts payment, there is a client-lawyer relationship for the purposes of the Rules of Professional Conduct.

Inquiry:

John Doe consulted Attorney A about a property line dispute with Mr. Doe's neighbor. At the request of Attorney A, Mr. Doe paid Attorney A a consultation fee of $100, which was accepted by Attorney A. Thereafter, Mr. Doe hired another lawyer to represent him in the property dispute.

Attorney A contends that Mr. Doe was a "prospective client," as that term is defined and addressed in Rule 1.18, *Duties to Prospective Client,* and that he owes Mr. Doe only the protections afforded a prospective client. Is Attorney A correct?

Opinion:

No. A client-lawyer relationship may be formed in an initial consultation although no legal fee is paid. However, a client-lawyer relationship is unequivocally established, for the purposes of the Rules of Professional Conduct, when a lawyer charges a fee for a service, regardless of how limited, and the fee is paid. The duties of loyalty and confidentiality exist with respect to the matter discussed. Rule 1.7. If the client does not retain the lawyer for further assistance, the client becomes a former client.

Ordinarily, a person who discusses the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client. A prospective client receives some, but not all, of the protections afforded clients and former clients. Rule 1.18. However, when a lawyer charges a fee that the heretofore prospective client pays, in exchange for the lawyer's time and/or advice, a client-lawyer relationship exists with respect to the provision of that service. If the representation proceeds no further—for example, the client does not retain the lawyer for additional assistance—the client becomes a former client. Rule 1.9.

Proposed 2007 Formal Ethics Opinion 1
Duty to Heirs When Filing Wrongful Death Action
January 18, 2007

Proposed opinion rules that a lawyer owes no duty to the heirs of an estate that he represents in a wrongful death action.

Inquiry #1:

When a lawyer files a wrongful death action on behalf of an estate, what are the lawyer's duties to the heirs of the deceased?

Opinion #1:

Pursuant to RPC 137, a lawyer representing an estate represents the personal representative in his or her official capacity and the estate as an entity. Any obligation to the

heirs is purely incidental to this representation.

Inquiry #2:

Can the lawyer advise the heirs of their respective rights to share or not to share in any recovery in the wrongful death action?

Opinion #2:

The lawyer does not represent the heirs and he should inform the heirs of his role in representing the estate. If the heirs are not represented by counsel, the lawyer may not give the heirs legal advice, other than the advice to secure their own counsel. Rule 4.3. With the consent of the estate's personal representative, the lawyer may provide the heirs with factual information concerning the wrongful death action. *See* Rule 1.6; Rule 1.2.

Inquiry #3:

On behalf of the estate, the lawyer settles a wrongful death claim for a decedent who is survived by her mother and father. The mother, as personal representative of the estate, asks the lawyer not to pay proceeds from the settlement to the father because the mother alleges that the father willfully abandoned the child during her lifetime. N.C. Gen. Stat. § 31A-2 prohibits a parent who abandoned a child from participating in the proceeds of a wrongful death action.

May the lawyer communicate an offer from the mother to the father requesting the father to reduce his claim to the proceeds of the settlement to a nominal amount? May the lawyer convey offers and counter offers between the mother and the father without advising either party with respect to their rights or the likelihood of success at a hearing to determine abandonment?

Opinion #3:

Yes. Determining whether there is a legal prohibition to participation in the proceeds of the wrongful death settlement is an appropriate role of the personal representative of the estate and the lawyer should provide legal advice to the personal representative on this issue. Based upon this advice, the estate's personal representative will establish the objectives of the lawyer's representation of the estate on this issue. The lawyer's responsibility is to carry out those objectives provided they are consistent with the personal representative's fiduciary duties. In doing so, the lawyer continues to represent the estate and the personal representative in her official capacity. On behalf of the estate, the lawyer may negotiate with the father to reduce his claim to the wrongful death proceeds. The lawyer must make his role clear to the father and may not give the father legal advice. Rule 4.3.

Inquiry #4:

May the lawyer for the estate file an action to deny the father's right to share in the proceeds of the settlement pursuant to N.C. Gen. Stat. § 31A-2?

Opinion #4:

Yes. The lawyer may file a motion with the court to determine whether the father is entitled to any proceeds from the settlement. The filing of such a motion comports with the lawyer's duty to see that the estate proceeds are properly administered.

Proposed 2007 Formal Ethics Opinion 2 Taking Possession of Client's Contraband January 18, 2007

Proposed opinion rules that a lawyer may not take possession of a client's contraband if possession is itself a crime and, unless there is an exception allowing disclosure of confidential information, the lawyer may not disclose confidential information relative to the contraband.

Inquiry #1:

Defendant was arrested for drug trafficking and placed in jail. At the time of his arrest, Defendant was wearing a hat. The hat was confiscated by the police and put in the jail's repository for inmates' personal property along with Defendant's other clothes. Defendant was unable to post bond and remains in jail.

Attorney is appointed to represent Defendant. In an attorney-client consultation at the jail, Defendant tells Attorney that there is contraband hidden in the hat. It appears that the contraband has not been discovered by law enforcement or the jailers.

Attorney anticipates that Defendant will be convicted, probably by plea, and will be sentenced to prison. At that time, he will be asked about the disposition of his personal property. Personal clothing is not sent with inmates to prison; it is usually given to family or friends.

May Attorney take possession of the contraband for the purpose of destroying it, turning it over to the authorities, or giving it to a third party, such as another lawyer who would be subject to the duty of confidentially, to be delivered to the authorities?

Opinion #1:

No. Attorney may not take possession of an item that is contraband nor may the lawyer facilitate its transfer to any other person in furtherance of a crime.

A lawyer should not engage in criminal conduct under any circumstance and may not assist a client in conduct that the lawyer knows is criminal. *See* Rule 1.2(d) and Rule 8.4(d). If possession of an item is itself a crime, as in the case of contraband, a lawyer may not take possession of the item. *Compare* RPC 221.

Standard 4-4.6 of the *ABA Standards for Criminal Justice, The Prosecution and Defense Function*, 3rd ed. (1993), provides the following guidance:

> (a) Defense counsel who receives a physical item under circumstances implicating a client in criminal conduct should disclose the location of or should deliver that item to law enforcement authorities only: (1) if required by law or court order, or (2) as provided in paragraph (d).
>
> ....
>
> (d) If the item received is contraband, i.e., an item possession of which is in and of itself a crime such as narcotics, defense counsel may suggest that the client destroy it where there is no pending case or investigation relating to this evidence and where such destruction is clearly not in violation of any criminal statute. If such destruction is not permitted by law or if in defense counsel's judgment he or she cannot retain the item, whether or not it is contraband, in a way that does not pose an unreasonable risk of physical harm to anyone, defense counsel should disclose the location of or should deliver the item to law enforcement authorities.
>
> (e) If defense counsel discloses the location of or delivers the item to law enforcement authorities under paragraphs (a) or (d), or to a third party under paragraph (c)(1), he or she should do so in the way best designed to protect the client's interests.

If there is a law requiring Attorney to disclose the location of the contraband to the

authorities, Attorney must do so after notifying the client and explaining the legal consequences to the client. If there is no such law but the contraband is evidence in the pending case against Defendant or Attorney knows that there is a criminal investigation relative to the contraband, Attorney must discuss the matter with the client and recommend that the hat be surrendered to law enforcement, perhaps as a part of Defendant's plea bargain. If Defendant refuses and there is no law requiring disclosure to the authorities, Attorney may not disclose the location of the contraband to the authorities or anyone else unless an exception to the duty of confidentiality applies. *See* RPC 221.

Inquiry #2:

May Attorney disclose the location of the contraband to the authorities or to the family member or friend who is asked by Defendant to retrieve his personal property from the jail?

Opinion #2:

Rule 1.6(a) prohibits a lawyer from revealing information acquired during the professional relationship with a client unless the client consents, the disclosure is impliedly authorized to carry out the representation, or the disclosure is permitted by an exception set forth in paragraph (b) of the rule. The following exceptions might apply in this situation:

> (b) A lawyer may reveal information protected from disclosure by paragraph (a) to the extent the lawyer reasonably believes necessary:
>
> (1) to comply with the Rules of Professional Conduct, the law, or court order;
>
> (2) to prevent the commission of a crime by the client;
>
> (3) to prevent reasonably certain death or bodily harm; or
>
> (4) to prevent, mitigate, or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services were used.

With regard to the exception in Rule 1.6(b)(1), if there is a law requiring Attorney to disclose the location of the contraband, she must do so as noted in Opinion #1 above. If disclosure is not legally required, Rule 8.4(d), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice, may permit disclosure if the contraband is evidence in the pending action against Defendant or the subject of a criminal investigation. *See also* Rule 3.4(a) (lawyer should not unlawfully obstruct access to evidence). If Attorney determines that this exception to confidentiality applies, Attorney should take steps to minimize the harm to Defendant. This would include encouraging Defendant to permit Attorney to use the information in plea negotiations.

On close inspection, the other exceptions to the duty of confidentiality do not apply. The criminal conduct occurred prior to Attorney's involvement and, therefore, disclosure would not prevent commission of a crime by the client as contemplated by the exception in Rule 1.6(b)(2). Similarly, unless the contraband is a weapon or some other dangerous item, disclosure is not necessary to prevent reasonably certain death or bodily harm as contemplated by the exception in Rule 1.6(b)(3). Finally, Attorney's services were not used to perpetrate Defendant's crime and disclosure is not necessary to rectify the consequences of Attorney's conduct as contemplated by the exception in Rule 1.6(b)(4).

Regardless of whether Attorney may disclose information relative to the contraband, Attorney must advise Defendant of the potential risk to a family member or friend who takes possession of the hat. If Defendant is determined to have a family member or a friend retrieve his clothing from the jail, Attorney should encourage Defendant to disclose the contents of the hat to the family member or friend or to allow Attorney to do so along with an explanation of the legal consequences of taking possession of contraband and of destroying the contraband.

Attorney should advise Defendant of the legal and practical consequences of any course of action that he takes, including abandoning the hat and its contents.

Proposed 2007 Formal Ethics Opinion 3 Responding to Unauthorized Practice at Quasi-Judicial Hearing Before Government Body January 18, 2007

Proposed opinion explains the duties of a lawyer who represents a local government and of a lawyer who is elected to the governing body of the local government relative to a nonlawyer appearing in a representative capacity for a party at a zoning variance and other quasi-judicial hearings before the government body.

Inquiry #1:

In Authorized Practice Advisory Opinion 2006-1, *Appearances at Quasi-Judicial Hearings on Zoning and Land Use* (October 20, 2006), the Authorized Practice Committee of the North Carolina State Bar was asked whether it is the unauthorized practice of law for an individual who is not an active member of the State Bar to appear in a representative capacity for a party in a quasi-judicial hearing before a planning board, board of adjustment, or other body of local government. In the opinion, the

Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the Rules of Professional Conduct as revised effective March 1, 2003, and thereafter amended, and referred to herein as the Rules of Professional Conduct (2003). The proposed opinions are issued pursuant to the "Procedures for Ruling on Questions of Legal Ethics." 27 N.C.A.C. ID, Sect .0100. Any interested person or group may submit a written comment or request to be heard concerning a proposed opinion. Any such request should be directed to the Ethics Committee at PO Box 25908, Raleigh, NC 27611, prior to the next meeting of the committee in April 2007.

Captions and Headnotes

A caption and a short description of each of the proposed opinions precedes the statement of the inquiry. The captions and descriptions are provided as research aids and are not official statements of the Ethics Committee or the council.

Public Information

The Ethics Committee's meetings are public, and materials submitted for consideration are generally NOT held in confidence. Persons submitting requests for advice are cautioned that inquiries should not disclose client confidences or sensitive information that is not necessary to the resolution of the ethical questions presented.

Authorized Practice Committee observed that a hearing on an application for a special use permit or for a variance under zoning ordinances is quasi-judicial in nature, noting, among other things, that evidence is formally presented; witnesses are sworn, testify, and cross-examined; the body has the authority to issue subpoenas; a record is created and preserved; the decision must be based upon the evidence presented and include findings of fact; and the decision is reviewable by an appellate court based solely upon the record of the proceeding. The committee also observed that "the law is...clear that an appearance on behalf of another person, firm, or corporation in a representative capacity for the presentation of evidence through others, cross-examination of witnesses, and argument on the law ... is the practice of law." The opinion concludes, therefore, that appearance in a representative capacity at such quasi-judicial proceedings is limited to active members of the State Bar. *See* N.C. Gen. Stat. §§ 84-2.1 and 84-4.

It is a regular practice, particularly in small communities, for a petitioner at a hearing on a variance to be represented by a nonlawyer such as an architect, landscape architect, engineer, or surveyor. The planning department of the local government is typically made a party to the proceeding and, because of limited resources, appears at the hearing through a nonlawyer employee. The staff usually presents a factual narrative of the zoning history of the property, the nature and effect of the variance requested, and the position of the planning department on the validity of the proposed variance and its consequences for the community. Typically, the staff does not advocate a particular outcome.

Lawyer A regularly represents City. In this capacity, he provides legal advice to the city council and to the administration of City. During a hearing on a petition for a variance, Lawyer A advises the council; he does not advise or represent the planning department or city administration.

Rule 5.5(d) of the Rules of Professional Conduct prohibits a lawyer from assisting another person in the unauthorized practice of law. At a hearing on a petition for a variance or other similar quasi-judicial proceeding, what is Lawyer A's duty pursuant to Rule 5.5(d)?

Opinion #1:

As soon as Lawyer A determines that a nonlawyer is appearing in a representative capacity for a petitioner, Lawyer A must inform the city council of the holding in Authorized Practice Advisory Opinion 2006-1 and advise the council on the legal implications of the opinion. If the council decides to proceed with the hearing despite the advice of Lawyer A, Lawyer A may continue to provide advice to the members of the council on any matter that arises during the remainder of the hearing.

Inquiry #2:

Is Rule 5.5(d) applicable to the conduct of a lawyer who is serving as an elected member of the governing body of a local government?

Opinion #2:

Many of the Rules of Professional Conduct are applicable to a lawyer's conduct without regard to whether the conduct occurs while the lawyer is acting in her capacity as a lawyer or in some other capacity. Rule 5.5(d), however, usually applies to conduct by a lawyer who is acting in her capacity as a lawyer. *See, e.g.,* Rule 5.5, cmt. [8]-[9]. The rule prohibits "assisting" a nonlawyer in the unauthorized practice of law. A lawyer who is an elected member of a governing body does not "assist" a nonlawyer in the unauthorized practice of law if she determines that it is her duty as an elected official to participate as a member of a hearing panel for the governing body although the petitioner is represented by a nonlawyer.

Inquiry #3:

Lawyer M is an elected member of City Council. She is appointed to chair a hearing on a petition for a variance. Is Lawyer M required to prohibit nonlawyers from appearing on behalf of the parties at the hearing?

Opinion #3:

No. *See* opinion #2.

Inquiry #4:

When a question is raised about the appearance of the nonlawyer in representative capacity for the petitioner, a member of the city council makes a motion to permit the nonlawyer to appear for the petitioner. Is Lawyer M required by Rule 5.5(d) to vote against the motion?

Opinion #4:

No. *See* opinion #2. However, if Lawyer M concludes that the activity is illegal, Lawyer M may have a fiduciary duty, as an elected official, to vote against the motion.

Inquiry #5:

The city council votes in favor of permitting the nonlawyer to appear in a representative capacity for the petitioner. Is Lawyer M required to object or to recuse herself from participating in the hearing?

Opinion #5:

No. *See* Opinion #2.

Inquiry #6:

Lawyer X is an employee of City and provides legal advice and representation to the city council and to the administration of the city. The administration informs Lawyer X that a nonlawyer employee of the planning department will appear on behalf of the planning department at every hearing on a petition for a variance. What is Lawyer X's duty pursuant to Rule 5.5(d)?

Opinion #6:

No opinion is expressed on whether it is the unauthorized practice of law for a nonlawyer employee of the planning department to appear on behalf of the department at a hearing on a variance petition. On this issue, Authorized Practice Advisory Opinion 2006-1 provides as follows:

> [This] opinion is ... not intended to affect the ability of city and county planning staff to present factual information to the hearing board, including a recitation of the procedural posture of

the application, and to offer such opinions as they may be qualified to make without an attorney for the government present, as the [Authorized Practice Committee] understands is the proper, current practice and role of the planning staff.

If the employee of the planning department is appearing in a representative capacity and not merely to present factual information or an opinion, and such conduct is the unauthorized practice of law, Lawyer X may not assist the employee to appear on behalf of the planning department at these hearings. Improper assistance would include preparing or assisting with the preparation of the nonlawyer's presentation or with any evidence the nonlawyer intends to present at a hearing. In addition, Lawyer X should advise the city administration of the ruling in Authorized Practice Advisory Opinion 2006-1, explain its legal implications, and give appropriate legal advice and guidance.

Inquiry #7:

Lawyer Y is in private practice but he is under contract to provide legal representation to City. Are Lawyer Y's responsibilities relative to Rule 5.5(d) the same as the duties of Lawyer X?

Opinion #7:

Yes.

Inquiry #8:

Lawyer Q is a member of the Board of Directors of ABC Corporation. ABC Corporation plans to have an architect represent the corporation at a hearing on a petition for a variance that was filed by ABC.

Is Rule 5.5(d) applicable to the conduct of Lawyer Q as a board member?

Opinion #8:

As a member of the board, Lawyer Q may have a fiduciary duty to inform the board that a nonlawyer appearing in a representative capacity for a party may constitute illegal activity, including the unauthorized practice of law, and to vote against the corporation's participation in illegal activities. Lawyer Q does not, however, violate Rule 5.5(d) if he does not take any other action to prevent the corporation's practice of sending a nonlawyer to represent the corporation at the hearing on the variance petition. *See, e.g.,* Opinion #2.

Proposed 2007 Formal Ethics Opinion 4 Solicitation After Seminar, Gifts to Clients and Others, and Distribution of Business Cards January 18, 2007

Proposed opinion provides guidance on miscellaneous issues relative to client seminars and solicitation, gifts to clients and others following referrals, distribution of business cards, and client endorsements.

Inquiry #1:

May an attorney advertise and conduct educational seminars for non-clients and, at the end of the presentation, request that the attendees complete an evaluation feedback form which includes the attendee's name, contact, and family information, as well as check boxes to indicate areas of particular interest and a desire, or not, for a free, personal consultation?

Opinion #1:

An attorney may conduct educational seminars for non-clients. *See* RPC 36. The attorney may advertise the seminars so long as the advertisements comply with the Rules of Professional Conduct. *See* Rule 7.2. The attorney may request attendees to complete an evaluation feedback form that includes the attendee's name, contact, and family information, as well as check boxes to indicate areas of particular interest. After the seminar, the attorney may not contact an attendee by in-person or telephone solicitation but must wait for the attendee to contact the attorney. Rule 7.3(a).

Inquiry #2:

May an attorney host a purely social, non-education function for clients and non-clients, including allied professionals, at no charge to them, who have referred prospective business to the attorney?

Opinion #2:

An attorney may host a social function for existing clients. *See* RPC 146. The attorney may invite non-clients, so long as the attorney does not solicit business from the non-clients.

Inquiry #3:

May an attorney send a restaurant or store gift certificate to a client or non-client in appreciation for a referral from that person?

Opinion #3:

No. Rule 7.2(b) prohibits a lawyer from giving anything of value to a person for recommending the lawyer's services.

Inquiry #4:

May an attorney send holiday fruit baskets, meats, cheese, nuts, or sweets to existing clients?

Opinion #4:

An attorney may give gifts of nominal value, including holiday gifts, to clients.

Inquiry #5:

If a client, non-client, fellow attorney, or allied professional requests one or more business cards or firm brochures from the estate-planning attorney, may the estate-planning attorney oblige the request?

Opinion #5:

The attorney may give a third party one of his business cards or one brochure in response to a request. The attorney may not give the third party multiple cards or brochures because of the risk of in-person solicitation by the third party on the attorney's behalf. *See* 2006 FEO 7, Rule 7.3.

Inquiry #6:

Along with a thank-you letter from the attorney to a client for the client's having allowed the attorney to provide services to that client, may the attorney include a business card and/or firm brochure with the suggestion that the client, if so willing, pass it along to someone who the client thinks might need similar services?

Opinion #6:

No, because of the risk of in-person solicitation by the third party on the attorney's behalf. *See* 2006 FEO 7, Rule 7.3.

Inquiry #7:

At the conclusion of rendering services to the client, assume the attorney includes with a thank-you letter a "report card" form for the client to return, if so willing, indicating the client's level of satisfaction with various aspects of the attorney-client experience. If the client chooses to make favorable com-

ments about the attorney or services and expressly consents to the use of those comments for the attorney's marketing purposes, may the attorney use those testimonials in any of its advertising media?

Opinion #7:

With the clients' consent, an attorney may use client endorsements if the clients' statements are truthful "soft" endorsements of the attorney's services that do not create unjustified expectations about the results that the attorney can achieve. A soft endorsement describes characteristics of the lawyer's client service and does not describe the results that the lawyer achieved for the client.

Inquiry #8:

If the attorney's office is in North Carolina but the attorney is also licensed to practice in or for clients in another state, and something is expressly allowed ethically by the other state but prohibited in North Carolina, is the attorney subject to discipline in North Carolina?

Opinion #8:

Rule 8.5 states "A lawyer admitted to practice in North Carolina is subject to the disciplinary authority of North Carolina, regardless of where the lawyer's conduct occurs." Paragraph (b) provides for the choice of law as follows:

In any exercise of the disciplinary authority of North Carolina, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer is not subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Inquiry #9:

If any of the foregoing activities are prohibited, which ones must be reported to the State Bar pursuant to Rule 8.3?

Opinion #9:

As stated in Rule 8.3, a violation of the Rules of Professional Conduct that raises a *substantial* question about a lawyer's honesty, trustworthiness, or fitness must be reported to the State Bar.

Proposed 2007 Formal Ethics Opinion 5 Use of the Title "Doctor" in Academia January 18, 2007

Proposed opinion rules that a lawyer may use the title "doctor" but only in a post-secondary school academic setting.

Inquiry:

Attorney X is licensed to practice law in North Carolina and holds a Juris Doctor degree from an accredited university. Attorney X is working as a full-time college instructor and is not engaged in the private practice of law. RPC 5 prohibits a lawyer from referring to himself as holding a doctorate or using the title "doctor" to refer to himself. Pursuant to the opinion, Attorney X does not refer to herself as "Doctor X." However, the title "doctor" is used by college administrators and faculty with doctorates in fields other than medicine without any apparent risk of misleading students or others within the academic community. The prevailing opinion at the college is that a law degree is of lesser stature or value than other degrees because the title "doctor" does not attach. May Attorney X, and other lawyers who work in academia, use the designation "doctor" within that community?

Opinion:

Yes. RPC 5 provides as follows:

> Since it does not appear to be normal practice to refer to a *Juris Doctor* degree as simply a [d]octorate or to refer to an attorney holding a *Juris Doctor* degree as "Doctor," the use of those terms without explanation could be misleading and therefore is inappropriate.

Nevertheless, in academic communities, including community colleges and other post-secondary school institutions of higher education, where individuals with doctoral and other advanced degrees comparable to the *juris doctor* degree are routinely and traditionally referred to as "doctor," it is not misleading and not inappropriate for a person holding a *juris doctor* degree to refer to himself or herself as "doctor." The use of the designation "doctor," however, is specifically limited: a lawyer may use the designation only when working or otherwise participating in a function associated with a post-secondary school institution of higher education. In all other contexts, a lawyer may not refer to himself or herself as "doctor."

Proposed 2007 Formal Ethics Opinion 6 Valuing Effect of Lawyer's Departure in Firm Agreement January 18, 2007

Proposed opinion rules that a partnership, shareholders, or other similar agreement may include a repurchase or buy-out provision that takes into account the loss in firm value generated by the lawyer's departure provided the provision is fair and is not based solely upon loss in value due to the loss of client billings.

Inquiry:

Law Firm requires all its shareholders to sign an agreement providing for the purchase of shares by incoming shareholders and the repurchase of those shares by the firm upon each shareholder's departure. Attorney A, a shareholder at Law Firm, is leaving to join another firm. A number of clients have elected to have Attorney A continue their representation after he leaves the firm.

Pursuant to the agreement, in the event a departing shareholder takes clients with him, the repurchase obligation of Law Firm is reduced according to the following formula:

> The purchase price shall be reduced . . . by an amount equal to one hundred twenty-five Percent (125%) of the work in process generated by employees of the corporation during the twelve (12) months preceding the event requiring or permitting the stock purchase on behalf of clients of the corporation for whom the shareholder or law firm with whom the shareholder is or becomes associated, performs legal services during the twelve (12) month period following the event requiring or permitting the stock purchase . . . .
>
> In no event does the stock purchase price become reduced below zero.

Assume that the value of Attorney A's stock is $20,000. After leaving Law Firm,

Attorney A will continue to represent clients who have traditionally generated more firm revenue than the value of Attorney A's stock. Therefore, Law Firm's repurchase obligation to Attorney A under the circumstances is zero.

Does the above provision violate the Rules of Professional Conduct?

Opinion:

Yes. Rule 5.6(a) of the Rules of Professional Conduct reads as follows:

> A lawyer shall not participate in offering or making:
>
> (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement;

Rule 5.6 protects two important ethical principles: the right of clients to legal counsel of their choice and lawyer mobility. Although this provision is not like a typical covenant not to compete in that it does not have geographical or temporal restrictions, it does tie the decrease in share value to the fact that the departed lawyer represents former clients of the firm. By so doing, the provision provides a disincentive for the departing lawyer to represent clients with whom the lawyer has a prior relationship, penalizes the departing lawyer for representing former clients of the firm, and restricts the lawyer's right to practice. Moreover, the provision does not appear to measure the devaluation of the lawyer's shares in the firm due to the lawyer's departure. If a provision in a firm agreement penalizes a lawyer for taking clients, will dissuade a lawyer from continuing to represent firm clients after his departure, or does not otherwise fairly represent the devaluation of ownership interest in the firm engendered by the lawyer's departure, it violates Rule 5.6(a). *See e.g.,* 2001 FEO 10 (purpose of employment agreement was to discourage competitive activity and was, therefore, unethical).

Nevertheless, Rule 5.6(a) does not prohibit a repurchase provision in a firm agreement that takes into account the financial effect of a lawyer's departure from a firm. However, the provision must include a more refined approach for evaluating the loss of value due to the lawyer's departure. For example, a provision that takes into account various economic factors that affect the value of the firm's shares, such as long-term financial commitments to staff and for space and equipment leases originally made by the firm in reliance upon the departing lawyer's continued contribution to the firm, may be acceptable under the rule. To the extent that a contractual provision represents a fair assessment of the forecasted devaluation in the ownership interest in the firm engendered by a lawyer's departure and does not penalize the lawyer for taking clients with him, the provision might not violate Rule 5.6(a). ■

Rule Amendments (cont.)

in subsection (c).

(b) A proposed rule or amendment to a rule must be presented to the Executive Committee and the council prior to publication for comment, and specifically approved for publication by both.

(c) A proposed rule or amendment to a rule must be published for comment in an official printed publication of the North Carolina State Bar that is mailed to the membership at least 30 days in advance of its final consideration by the council. The publication of any such proposal must be accompanied by a prominent statement inviting all interested parties to submit comment to the North Carolina State Bar at a specified postal or e-mail address prior to the next meeting of the Executive Committee, the date of which shall be set forth.

.1402 Review by the Executive Committee

At its next meeting following the publication or republication of any proposed rule or amendment to a rule, the Executive Committee shall review the proposal and any comment that has been received concerning the proposal. The Executive Committee shall then:

> (a) recommend the proposal's adoption by the council;
>
> (b) recommend the proposal's adoption by the council with nonsubstantive modification;
>
> (c) recommend to the council that the proposal be republished with substantive modification;
>
> (d) defer consideration of the matter to its next regular business meeting;
>
> (e) table the matter; or
>
> (f) reject the proposal.

.1403 Action by the Council and Review by the North Carolina Supreme Court

(a) Whenever the Executive Committee recommends adoption of any proposed rule or amendment to a rule in accordance with the procedure set forth in Rule .1402 above, the council at its next regular business meeting shall consider the proposal, the Executive Committee's recommendation, and any comment received from interested parties, and:

> (1) decide whether to adopt the proposed rule or amendment, subject to the approval of the North Carolina Supreme Court as described in G.S. 84-21;
>
> (2) reject the proposed rule or amendment; or
>
> (3) refer the matter back to the Executive Committee for reconsideration.

(b) Any proposed rule or amendment to a rule adopted by the council shall be transmitted by the secretary to the North Carolina Supreme Court for its review on a schedule approved by the Court, but in no event later than 120 days following the council's adoption of the proposed rule or amendment.

(c) No proposed rule or amendment to a rule adopted by the council shall take effect unless and until it is approved by order of the North Carolina Supreme Court.

(d) The secretary shall promptly transmit the official text of any proposed rule or amendment to a rule adopted by the council and approved by the North Carolina Supreme Court to the Office of Administrative Hearings for publication in the North Carolina Administrative Code.

(e) Any action taken by the council or the North Carolina Supreme Court in regard to any proposed rule or amendment to a rule shall be reported in the next issue of the printed publication referenced in Rule .1401 above. ■

New State Bar Councilors

Judicial District 26 has two new representatives—**Robert J. Bernhardt** and **F. Fincher Jarrell**. Bernhardt earned his undergraduate degree from Indiana University in Bloomington, IN. He then attended law school at the University of Michigan in Ann Arbor. He practices with the firm of Bernhardt and Strawser, PA. In addition to his involvement with the State Bar, Bernhardt is a member of the North Carolina Bar Association (NCBA) and the National Association of Retail Collection Attorneys.

Jarrell earned both his undergraduate and JD degrees from the University of North Carolina-Chapel Hill. Since 1971 he has practiced with Kennedy Covington Lobdell & Hickman. He is active with the Mecklenburg Bar Association and NCBA.

Judicial District 18 is now represented by **Nancy S. Ferguson**. Ferguson earned both her undergraduate and JD degrees from UNC, and an MBA from Wake Forest University. She has been in private practice, worked for Lawyers Title Insurance Company, and is currently employed with Chicago Title Insurance Company. She has served both the Greensboro Bar Association and North Carolina Land Title Association as president, and the North Carolina Bar Association Real Property Section as secretary and treasurer. The NCBA Real Property Section recognized her with its Extraordinary Service Award.

Forrest A. Ferrell of Hickory is now representing Judicial District 25. Ferrell graduated from High Point College, and then earned his LLB from the University of North Carolina School of Law. In 1964 Ferrell entered private practice, but left in 1975 to become a superior court judge. He served as a judge until 1998 and is now a member of Sigmon Clark Mackie Hilton Hanvey & Ferrell, PA. Ferrell has been involved in several legal organizations including serving as vice-president of the NCBA and president of the Conference of Superior Court Judges. He has also served as director of the Hickory Rotary Club. Ferrell was honored by Governor Hunt, who awarded him the Order of the Long Leaf Pine.

Richard T. Gammon is a new representative for Judicial District 10. Gammon earned both his undergraduate and JD degrees from Campbell University. Since graduating from law school, he has been in private practice. From 1996-2001, he served on the State Bar's Disciplinary Hearing Commission (DHC), and from 2002-2005 he was the DHC chair. Gammon is a recipient of Campbell University's James Iredell Award.

Judicial District 28 is now represented by **Howard L. Gum**. Gum completed his undergraduate studies at Bradley University in Peoria, IL. He then earned his JD degree in 1976 from the University of Illinois College of Law. Gum is a senior partner with the Asheville firm of Gum, Hillier & McCroskey, PA. In 1989 he became a certified specialist in family law, and from 1996 to 2001 he sat on the North Carolina Board of Legal Specialization, which he served as vice-chair and chair. Gum is active in the NCBA, American Bar Association, and the North Carolina Chapter of the American Academy of Matrimonial Lawyers. Additionally, Gum has served on the State Bar's Ethics Committee.

Donald E. Harrop Jr. is the new representative for Judicial District 11. He earned his undergraduate degree from Duke University, and his JD degree from Campbell University. Since graduating, he has been in private practice. He is the past president of the Harnett County Bar Association, and has been involved with Kiwanis, Lion's Club, Loyal Order of Moose, and Masons. He also spends time coaching youth.

William R. Purcell is the new representative for Judicial District 16A. Purcell attended

CONTINUED ON PAGE 55

In Memoriam

John M. Barnhardt
Concord (Deceased 2006)

John V. Blackwell Jr.
Fayetteville (Deceased 2006)

Marvin K. Blount Jr.
Greenville (Deceased 2006)

Roger Edwards
Oak Island (Deceased 2006)

Richard C. Erwin Sr.
Winston-Salem (Deceased 2006)

George H. Esser Jr.
Chapel Hill (Deceased 2006)

Daniel A. Frazier
Winston-Salem (1949-2006)

Karl N. Hill Jr.
Greensboro (Deceased 2006)

Walter L. Horton Jr.
Raleigh (Deceased 2006)

Lisa T. Kelly
Charlotte (Deceased 2006)

Joseph H. Levinson
Benson (Deceased 2006)

Harold C. Mahler
Greensboro (Deceased 2006)

Joseph W. Mauney
Shelby (Deceased 2007)

Joseph N. Quinn Jr.
Wilson (Deceased 2006)

Prince E. Shyllon
Raleigh (Deceased 2007)

Charles M. White III
Warrenton (Deceased 2007)

Client Security Fund Reimburses Victims

At its January 18, 2007, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $96,670.24 to 25 clients who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of $1,000.00 to a former client of Andre F. Barrett formerly of Charlotte. The board found that Barrett was retained to handle a traffic matter and failed to provide any valuable legal services for the fee paid. Barrett was disbarred on July 19, 2002.

2. An award of $200.00 to a former client of Gene A. Dickey of Winston-Salem. The board found that the client paid Dickey a $200.00 retainer to handle a medical malpractice claim. Dickey failed to provide any legal services on the client's behalf. Dickey was disbarred on September 24, 2004.

3. An award of $48,800.00 to a former client of Sherrie R. Hodges of Jefferson. The board found that Hodges was retained to handle an estate matter and misappropriated estate funds. Hodges was disbarred on April 21, 2006.

4. An award of $1,055.24 to a former client of Robert J. Hume III formerly of Cedar Point. The board found that Hume closed a real estate transaction for the client and failed to pay the homeowner's insurance and the title insurance premiums. Hume committed suicide on November 10, 2005.

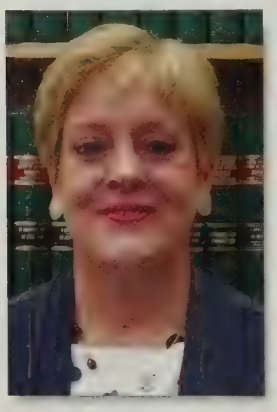
5. Awards totaling $5,780.00 to 19 former clients of Joseph W. Morton of Jacksonville. The board found that Morton was retained to handle traffic matters for these clients and failed to provide any beneficial legal services on their behalf. Morton was disbarred on July 21, 2006.

6. An award of $2,500.00 to a former client of Joseph W. Morton. The board found that Morton was retained to handle a child custody matter and failed to provide the client with any valuable legal services for the fee paid.

7. An award of $33,335.00 to a former client of Teresa L. Smallwood of Durham. The board found that Smallwood settled a personal injury claim for the client and failed to pay the Medicaid lien. Smallwood was disbarred on January 13, 2007. ■

State Bar Hires New General Counsel

On November 7, 2006, the State Bar's executive director, Tom Lunsford, announced the hiring of Katherine E. Jean as the Bar's new general counsel, effectively concluding a search process that began four months earlier when Carolin D. Bakewell resigned the position she had held since 1991. Ms. Jean, who had been serving as interim co-counsel since Ms. Bakewell's resignation, joined the State Bar's legal staff in April 2005 as deputy counsel. She is a 1985 graduate of the University of North Carolina's School of Law and for 20 years prior to joining the Bar maintained a successful private practice in Raleigh.



In making the announcement, Mr. Lunsford noted that the search process, during which 25 candidates were personally interviewed, was painstaking and thorough. Regarding his decision to promote the in-house applicant, he made the following statement: "We are extremely pleased that we have been able to persuade Katherine Jean to accept this very important position. She is an exceptionally talented lawyer with a wealth of experience in litigation and other legal matters. She has already served us well as a member of our legal staff and is going to provide outstanding leadership for our disciplinary program. She is unquestionably the right person for the job." Echoing these sentiments, the State Bar's President, Steve Michael, recently stated that, "Katherine has the full confidence of the Bar's leadership. She has already put her stamp on the Office of Counsel administratively and legally. She will represent the lawyers of our state with great distinction."

In her new position Ms. Jean directs a staff of 33 dedicated professionals, including nine other lawyers, 11 investigators, and five paralegals. On those rare occasions when she has free time, she is an accomplished equestrienne. She can be contacted at the State Bar's office by phone, (919) 828-4620, or email kjean@ncbar.gov. ■

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Suspension Orders Result from Surcharge Noncompliance

Twenty-two lawyers who refused to pay the judicial surcharge and challenged the State Bar's authority to suspend them for noncompliance, were ordered suspended by the State Bar Council at its meeting on January 19, 2007. The council acted upon the recommendation of its Administrative Committee, which had held a show cause hearing concerning the matter on January 17, 2007. At the hearing, which was a continuation of a proceeding that began at the committee's last quarterly meeting in October 2006, the respondent lawyers were given an opportunity to present their objections and legal arguments orally and in writing. After the respondents made their presentation, the committee determined that the State Bar is obligated by law to collect the surcharge, and unanimously agreed that the State Bar has authority to suspend noncompliant members administratively. The committee then recommended that the respondents be suspended. Under the State Bar's membership rules, orders of suspension do not take effect until 30 days after they are served. At this writing the respondents still have the opportunity to avoid suspension by paying the surcharge. ■

New Councilors (cont.)

Davidson College and UNC School of Law. Currently, he is a partner at Purcell & Griswold, LLP. Purcell is a member of the NCBA, ABA, and American Health Lawyers Association. He has been active in several civic organizations including Laurinburg Rotary Club, Habitat for Humanity of Scotland County, Scotland County Red Cross, United Way of Scotland, Boy Scouts of America, Richmond Community College Foundation, and the Laurinburg Scotland County Chamber of Commerce. In 1997 he was presented with the Laurinburg Jaycees Distinguished Service Award.

G. Gray Wilson is now a representative for Judicial District 21. Wilson earned his undergraduate degree from Davidson College, and then his JD degree from Duke University Law School. Since 1992 he has practiced with Wilson & Coffey, LLP. Wilson has been active in several legal organizations including Lawyers Mutual Liability Insurance Company (director, 2006), NCBA (president, 2004), the American College of Trial Lawyers, and the Forsyth County Bar Association. His civic duties include work with the Old Hickory Council and Boy Scouts of America. In 2005, he was honored as Volunteer Attorney of the Year. Wilson also published a novel, *The Killing Pond*, in 1993.

The new representative for Judicial District 10 is **Cynthia L. Wittmer**. Wittmer earned her undergraduate degree from UNC-Chapel Hill in 1975, and her JD degree from Duke University Law School in 1981. After graduating, Wittmer joined Sanford, Adams, McCullough & Beard as an associate, and became a partner in 1986. The firm merged in 1990 with a Charlotte firm to become Parker Poe Adams & Burnstein. Wittmer is a member of the Wake County Bar Association, served as chair of the 10th Judicial District Grievance Committee from 2003-2006 and its Fee Arbitration Committee from 1991-1998. She is a member of the Wake County Bar Association and is also active in the Raleigh Professional Womens Forum. Wittmer has been honored with the Wake County Bar Associations President's Award of Excellence in 1993, 1998, 2004, and 2006. ■

July 2007 Bar Exam Applicants

The July 2007 Bar Examination will be held in Raleigh on July 24 and 25, 2007. Published below are the names of the applicants whose applications were received on or before January 30, 2007. Members are requested to examine it and notify the board in a signed letter of any information which might influence the board in considering the general fitness of any applicant for admission. Correspondence should be directed to Fred P. Parker III, Executive Director, Board of Law Examiners, PO Box 2946, Raleigh, NC 27602.

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President's Message (cont.)

not achieved the 90% participation that Bud proposed, and it is time for the alternative to be considered.

I am proud to tell you that 75% of North Carolina lawyers are participating in the NC IOLTA Program. That program will be administering $3.7 million dollars in grants in 2007, using funds generated from the interest on pooled client trust accounts. Since its inception in 1984, it has granted over $50 million dollars for legal related charitable purposes.

Lawyers are known for providing their support, generally in the form of their time or money, to improve their communities in a variety of ways. If you could provide support for programs that reach into every community of our state to improve the lives of your fellow citizens without spending any time or money, would you do it? Without spending your time and money, would you:

- provide training and support for the court advocates and lawyers who help domestic violence victims;
- assist the Administrative Office of the Courts find a solution to the need for interpreter services;
- put law students into public interest summer internships to help them understand the need for public interest and pro bono service;
- train local officials on how to provide safe and humane jails;
- provide first rate judicial education to North Carolina judges;
- leverage state funds provided to assist young lawyers in public interest practice pay off law school loans;
- provide legal assistance for at risk children, the elderly, the disabled, and the poor in need of basic necessities; and
- help lawyers connect with those who need pro bono assistance?

Attorneys who participate in NC IOLTA do all the above, but what more could we accomplish if all North Carolina attorneys eligible to participate in the program were doing so? This is a question that we at the State Bar are asking as we consider making North Carolina's IOLTA Program a comprehensive program. There are now 52 IOLTA programs established in every state, in DC, and the Virgin Islands. As shown on the map in the last issue of the State Bar *Journal*, the program is comprehensive in 32 jurisdictions, i.e. all attorneys who keep general client trust accounts must participate in the program. According to information provided by the ABA Commission on IOLTA, the three states that moved to mandatory status in 2005 have shown an average monthly income increase from 60% to over 100%. Though our already high participation rate may mean that we will not see the highest level of income increases, any additional income for these purposes is much needed and helps the bar discharge its responsibilities to insure equal access to justice. As an organized bar, we memorialize our responsibility to insure equal access to justice in the preamble to our Rules of Professional Conduct and have defined ourselves as "A group of people united in a learned calling for the public good."

The Equal Access to Justice Commission last year reviewed information on the poverty level population in North Carolina and their needs in obtaining basic necessities. They learned that the national organization through which legal aid funding is provided has found that only 20% of the legal needs of the poor are being met, and that North Carolina lags behind the national average in dollars per poor person available for these needs from almost every funding source. Moving North Carolina to a comprehensive IOLTA Program is viewed by the commission as an excellent way to give additional support for our access to justice community, as it does not require attorneys to provide their time or monetary support.

As the council moves forward with consideration of the Pro Bono Emeritus Program and making the North Carolina IOLTA Program comprehensive, I hope that you will contact the State Bar, your State Bar Officers, and State Bar councilors or the North Carolina IOLTA Office if you have any questions, concerns, or would like to learn more about what these programs can do for the public interest in North Carolina. I support these proposals and hope that you will join in by expressing your support. ■

Steven D. Michael is with the Kitty Hawk firm of Sharp, Michael, Outten & Graham

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Trouble Communicating?

Effective communications are vital to successful office management. A busy lawyer can often let the lines of communication with staff lapse, which can lead to unintentional ethics violations. Mistakes like this can be avoided by keeping in close contact with employees through regular meetings.

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